

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11,918

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED

OCT 14 1953

JAMES S. TURNER, *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

No. 11,920

ELAINE A. LEE, *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

Appeals from the United States District Court for the
District of Columbia.

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No. 11,918

JAMES S. TURNER, *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

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Appeals from the United States District Court for the
District of Columbia.

JOINT APPENDIX

516

Filed June 24, 1952

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

1265-'52

G. J. 762-52

Commissioner's Docket No. 11

Case No. 5398

UNITED STATES OF AMERICA,

v.

MRS. DOROTHY D. TURNER.

Search Warrant

To W. Bruce Matthews, U. S. Marshal, D. C., or any other person authorized to serve same.

Affidavit having been made before me by Pvt. Sherwood H. Herring, Pvt. Irvin W. Brewer, Prob. Det. Seymour Raboy, Det. Sgt. Joseph A. Gabrys, Pvt. Dante Longo, and Prob. Det. Guy W. Holcomb, Jr. Narcotic Sqd., MPDC. that he (is positive¹) that (on the premises known as) 4107—8th Street, N. W., Washington (a two story brick dwelling occupied by Mrs. Dorothy D. Turner) in the District of Columbia, there is now being concealed certain property, namely Heroin, Syringes, Tourniquets, Cookers, and paraphernalia used in the preparation of Heroin for retail. Any other paraphernalia used in the preparation and dispensation of Heroin and any other narcotic drugs. Any other narcotic drugs illegally held which are in violation of U. S. Code Title 26, Section 2553a, and which are being held illegally and as I am satisfied that there is probable cause to believe that the property so described is being concealed on the (premises) above described and

¹ The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

that the foregoing grounds for application for issuance of the search warrant exist.

You are hereby commanded to search forthwith the (place) named for the property specified, serving this warrant and making the search (at any time in the day or night¹) and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and return this warrant and bring the property before me within ten days of this date, as required by law.

Dated this 22nd day of April, 1952.

June 25, 1952.

CYCIL S. LAWRENCE,
U. S. Commissioner.

516A Def't Lee Ext. No. 1 for Identf.

RETURN

I received the attached search warrant April 25, 1952, and have executed it as follows:

On April 22, 1952 at 6:50 o'clock P. M., I searched (the premises) described in the warrant and

I left a copy of the warrant with James Turner together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

1 Bottle containing 71 capsules of suspected Heroin.

This inventory was made in the presence of Thos. W. Andrews Fed. Mun. Court, and Joseph A. Gabrys, Det. Staff.

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

¹ The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

Subscribed and sworn to and returned before me this
23 day of April, 1953.

CYCIL S. LAWRENCE,
United States Commissioner.

517

Narcotic Squad.
1265-'52

APPLICATION FOR DAY OR NIGHT TIME SEARCH
WARRANT

Premises 4107 8th Street, N. W., Washington, D. C. A two story brick dwelling occupied by Mrs. Dorothy D. Turner and others.

About 8:20 PM, Saturday, April 5, 1952 Private Dante Longo, Narcotic Squad, while engaged in an undercover capacity investigating the illicit narcotic drug activities in this city went to the 4100 block of 8th Street, N. W. with a special employee who was trying to make arrangements for Officer Longo to purchase narcotic drugs from Jessie Jeffers at 4101 8th Street, N. W. Jeffers being a well known drug addict peddler residing at above address. Officer Longo parked his automobile in front of 4107 8th Street, N. W. where he let the Special Employee get out of his car and observed him to enter 4101 8th Street, N. W. where he remained a short while. During this time Officer Longo observed several colored people enter 4107 8th Street, N. W. and among these was one Louise Rucker, Colored, 20 to 25 years, of 2037 K Street, N. W. from whom Officer Longo had purchased 4 capsules of Heroin, in this same area, on April 3, 1952. Officer Longo also observed that the people, including Louise, would enter 4107 8th Street, remain a short while and leave. Sometime later Officer Longo observed the special employee coming out of 4101 8th Street, N. W. and Louise Rucker coming out of 4107 8th Street, N. W. they met on the sidewalk and Louise entered the automobile of Officer Longo along with the special Employee. After Louise got into the car Officer Longo observed her count about 6 small white capsules of white

powder which she had in her hand. Officer Longo asked her if he could purchase some of the Heroin but she told him that she could not sell him any as she had picked up for a man she identified as John Kruse.

About 9:05 PM, Monday, April 7, 1952 Officer Longo made arrangements with one Eugene Major Nedab, a peddler of narcotic drugs, to make a purchase of some Heroin. Officer Longo also learned at this time that Nedab would probably go to 4107 8th Street, to make his purchase. Arrangements were then made by myself for Officer Seymour Raboy to cover Officer Longo during his purchase of narcotic drugs from the above address. Officer Raboy preceeded Officer Longo to the area of 8th and Taylor Streets, N. W. where he took up an observing position on the SW Corner of Taylor Street at 8th Street, N. W. About 9:12 PM, same date, Officer Raboy observed Officer Longo drive up in his automobile accompanied by Nedab. Officer Longo parked his automobile across Taylor Street from where Officer Raboy was observing and Officer Raboy saw Nedab leave Officer Longo's automobile and enter 4107 8th Street where he remained a short period of time returned to Officers Long's car and Officer Long drive away. Later in the office of the Narcotic Squad Officer Longo turned over to Sgt. Gabrys 4 capsules of white powder on which Sgt. Gabrys made a preliminary field test which indicated a positive reaction of the presence of a narcotic drug of the Opiate Group. Officer Longo further stated he paid Nedab \$10.00 for the 4 capsules.

518 On april 9, 1952 Officer Longo made another appointment with Major Eugene Nedab to purchase some narcotic drugs from him. At the same time Sgt. Gabrys accompanied by Officer Guy W. Holcomb, Jr. and Irvin Brewer went to the vicinity of 8th and Taylor Streets N. W. in Sgt. Gabrys private automobile. On arrival on the scene Sgt. Gabrys parked on the SE Corner of 8th and Taylor Street, N. W. where at about 10:38 PM, same date, Officers Gabrys, Brewer and Holcomb observed Officer

Longo drive North on 8th Street, N. W. and turn West on Taylor Street, N. W. parking a short distance below the NW Corner of Taylor and 8th Streets, N. W. Major Nedab was observed by all of the above officers to get out of Officer Longo's automobile and enter 4107 8th Street, N. W. where he remained a short period of time then came out and entered Officer Longo's automobile where he remained a short while then re-entered 4107 8th Streets, N. W. after several back and forth trips Officer Longo accompanied by Nedab finally left the scene. Later in the office of the narcotic squad, Officer Longo turned over to Sgt. Gabrys 53 capsules of white powder on which Sgt. Gabrys made a preliminary field test which disclosed the presence of a narcotic alkaloid of the Opiate group in the same. Officer Longo stated that the reason for the many trips back and forth between his car and 4107 8th Street, N. W. was that he was trying to Negotiate for an ounce of Heroin with Nedab.

On April 10th, 1952 Officer Longo made arrangements with Louise Rucker to purchase some narcotic drugs from her. At the same time Officers Gabrys Brewer and Herring went to 8th and Taylor Streets, N. W. where, from the SE Corner of Taylor and 8th Streets, N. W. they observed Officer Longo drive North on 8th Street, N. W. and turn left into Taylor Street, N. W. parking a short distance below the corner of 8th and Taylor Streets, N. W. Louise Rucker was then observed by all officers to leave the automobile of Officer Longo and enter 4107 8th Street, N. W. where she remained a short period of time before rejoining Officer Longo in his automobile after which Officer Longo drove from the scene. A short while later Officer Longo turned over to Pvt. Herring 13 small capsules each containing a white powder on which he made a preliminary field examination which disclosed the powder to have a positive narcotic alkaloid reaction.

519 About 12:30 PM, Tuesday, April 22, 1952 Officer Longo met Eugene Major Nedab at Connecticut Ave.,

and Que, N. W. from where they proceeded to 8th and Taylor Streets, N. W. where, in the meantime, Officers Tennyson and Raboy had gone before them and Pvt. Raboy took up an observing position on the SW Corner of 8th and Taylor Streets, N. W. During this observation He observed Officer Longo come to 8th and Taylor Streets, N. W. and park on the SE Corner of 8th and Taylor Streets, N. W. They observed Nedab get out of the automobile at 12:44 PM and enter premises 4107 8th Street, N. W. which he left at 1254 PM and re-entered Officer Longos automobile. Sometime later officer Longo turned over to Officer Herring, in the office of the narcotic squad 6 capsules of white powder which Officer Herring made a preliminary analysis on and which indicated the presence of a narcotic alkaloid.

From the evidence obtained as described above and from reliable information obtained from other sources that narcotic drugs are being sold and kept in premises 4107 8th Street, N. W. we make this application for a search warrant on these premises.

Pvt. SHERWOOD HERRING, Narc. Squad.
 Pvt. IRVIN A. BREWER, Narc. Squad.
 Prob. Det. SEYMORE RABOY, Narc. Sqd.
 Det. Sgt. JOSEPH A. GABRYS.
 Pvt. DANTE LONGO, Narc. Squad.
 Prob. Det. GUY W. HOLCOMB, Narc. Sqd.

Subscribed and sworn to before me this 22nd day of April 1952.

CYCIL S. LAWRENCE,
*United States Commissioner for
 The District of Columbia.*

Issued S. W. "Day and night time".

C. S. L.

520 Filed in Open Court August 11, 1952

Indictment

The Grand Jury charges:

On or about April 7, 1952, within the District of Columbia, James S. Turner did sell, barter, exchange and give away to Eugene Major Nedab four capsules containing a mixture totaling about four grains of Heroin Hydrochloride, Quinine Hydrochloride, Milk Sugar, and Corn Starch, not in pursuance of a written order, written for that purpose, from the said Eugene Major Nedab, as provided by law.

SECOND COUNT:

On or about April 7, 1952, within the District of Columbia, James S. Turner purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, four capsules containing a mixture totaling about four grains of Heroin Hydrochloride, Quinine Hydrochloride, Milk Sugar, and Corn Starch. This is the same Heroin Hydrochloride which is mentioned in the first count of this indictment.

THIRD COUNT:

On or about April 7, 1952, within the District of Columbia, James S. Turner facilitated the concealment and sale of four capsules containing a mixture totaling about four grains of Heroin Hydrochloride, Quinine Hydrochloride, Milk Sugar, and Corn Starch, after said Heroin Hydrochloride had, with the knowledge of James S. Turner, been imported into the United States contrary to law. This is the same Heroin Hydrochloride which is mentioned in the first and second counts of this indictment.

521 **FOURTH COUNT:**

On or about April 9, 1952, within the District of Columbia, James S. Turner did sell, barter, exchange and give away to Eugene Major Nedab fifty-three capsules con-

taining a mixture totaling about seventy-six grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, not in pursuance of a written order, written for that purpose, from the said Eugene Major Nedab, as provided by law.

FIFTH COUNT:

On or about April 9, 1952, within the District of Columbia, James S. Turner facilitated the concealment and sale of fifty-three capsules containing a mixture totaling about seventy-six grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, after said Heroin Hydrochloride had, with the knowledge of James S. Turner, been imported into the United States contrary to law. This is the same Heroin Hydrochloride which is mentioned in the fourth count of this indictment.

SIXTH COUNT:

On or about April 10, 1952, within the District of Columbia, James S. Turner did sell, barter, exchange and give away to Louise Rucker thirteen capsules containing a mixture totaling about twenty-one grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, not in pursuance of a written order, written for that purpose, from the said Louise Rucker, as provided by law.

SEVENTH COUNT:

On or about April 10, 1952, within the District of Columbia, James S. Turner facilitated the concealment and sale of thirteen capsules containing a mixture totaling about twenty-one grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, after said Heroin Hydrochloride had, with the knowledge of James S. Turner, been imported into the United States contrary to law. This is the same Heroin Hydrochloride which is mentioned in the sixth count of this indictment.

522 EIGHTH COUNT:

On or about April 14, 1952, within the District of Columbia, James S. Turner did sell, barter, exchange and give away to Louise Rucker four capsules containing a mixture totaling about 5.2 grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, not in pursuance of a written order, written for that purpose, from the said Louise Rucker, as provided by law.

NINTH COUNT:

On or about April 14, 1952, within the District of Columbia, James S. Turner facilitated the concealment and sale of four capsules containing a mixture totaling about 5.2 grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, after said Heroin Hydrochloride had, with the knowledge of James S. Teurner, been imported into the United States contrary to law. This is the same Heroin Hydrochloride which is mentioned in the eighth count of this indictment.

TENTH COUNT:

On or about April 22, 1952, within the District of Columbia, James S. Turner did sell, barter, exchange and give away to Eugene Major Nedab six capsules containing a mixture totaling about eight grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, not in pursuance of a written order, written for that purpose, from the said Eugene Major Nedab, as provided by law.

ELEVENTH COUNT:

On or about April 22, 1952, within the District of Columbia, James S. Turner facilitated the concealment and sale of six capsules containing a mixture totaling about eight grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, after said Heroin Hydrochloride had, with the knowledge of James S. Turner, been imported into the United States contrary to law. This is the same Heroin

Hydrochloride which is mentioned in the tenth count of this indictment.

523 TWELFTH COUNT:

On or about April 22, 1952, within the District of Columbia, James S. Turner and Elaine A. Lee did sell, barter, exchange and give away to Eugene Major Nedab eight capsules containing a mixture totaling about thirteen grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, not in pursuance of a written order, written for that purpose, from the said Eugene Major Nedab, as provided by law.

THIRTEENTH COUNT:

On or about April 22, 1952, within the District of Columbia, James S. Turner and Elaine A. Lee facilitated the concealment and sale of eight capsules containing a mixture totaling about thirteen grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, after said Heroin Hydrochloride had, with the knowledge of James S. Turner and Elaine A. Lee, been imported into the United States contrary to law. This is the same Heroin Hydrochloride which is mentioned in the twelfth count of this indictment.

FOURTEENTH COUNT:

On or about April 22, 1952, within the District of Columbia, James S. Turner and Elaine A. Lee did sell, barter, exchange and give away to Eugene Major Nedab seven capsules containing a mixture totaling about 10.7 grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, not in pursuance of a written order, written for that purpose, from the said Eugene Major Nedab, as provided by law.

FIFTEENTH COUNT:

On or about April 22, 1952, within the District of Columbia, James S. Turner and Elaine A. Lee facilitated the concealment and sale of seven capsules containing a mixture totaling about 10.7 grains of Heroin Hydrochloride,

Quinine Hydrochloride, and Milk Sugar, after said Heroin Hydrochloride had, with the knowledge of James S. Turner and Elaine A. Lee, been imported into the United States contrary to law. This is the same Heroin Hydrochloride which is mentioned the fourteenth count of this indictment.

524 SIXTEENTH COUNT:

On or about April 22, 1952, within the District of Columbia, James S. Turner and Elaine A. Lee purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, seventy-two capsules containing a mixture totaling about 112 grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar.

SEVENTEENTH COUNT:

On or about April 22, 1952, within the District of Columbia, James S. Turner and Elaine A. Lee facilitated the concealment and sale of seventy-two capsules containing a mixture totaling about 112 grains of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, after said Heroin Hydrochloride had, with the knowledge of James S. Turner and Elaine A. Lee, been imported into the United States contrary to law. This is the same Heroin Hydrochloride which is mentioned in the sixteenth count of this indictment.

* * * * *

526

Filed September 11, 1952

Motion to Suppress Evidence

The defendant James S. Turner moves the Court to suppress the evidence seized under a certain search warrant issued and executed on premises owned by him on to wit, the 22nd day of April, 1952, and for cause therefor states to the Court as follows:

1. The said warrant is fatally defective upon its face.
2. The warrant was issued without probable cause.

3. The warrant was executed upon premises owned by defendant in violation of the statute under which it was issued.

4. The execution of the warrant was violative of the rights secured to defendant under Articles IV and V of the Amendments to the Constitution of the United States.

5. The defendant will urge other and further reasons and causes at the oral hearing of this motion.

* * * * *

527 Filed September 11, 1952

**Motion to Dismiss Counts 10, 11, 12, 13, 14 and 15 of the
Indictment**

The defendant James S. Turner, by and through his attorney Curtis P. Mitchell, respectfully moves the Court to dismiss counts 10, 11, 12, 13, 14 and 15 of the indictment upon the grounds of duplicity.

* * * * *

528 Filed September 11, 1952

**Motion to Dismiss Counts 10, 11, 12, 13, 14 and 15 of the
Indictment**

The defendant Elaine A. Lee, by and through her attorney De Long Harris, respectfully moves the Court to dismiss counts 10, 11, 12, 13, 14 and 15 of the indictment upon the grounds of duplicity.

* * * * *

529 Filed September 11, 1952

Motion to Strike

The defendant James S. Turner, by and through his attorney, Curtis P. Mitchell, moves the Court to strike from the indictment herein counts 10, 11, 12, 13, 14 and 15 thereof and for cause therefor says that said counts are duplications.

* * * * *

Ruling on Motions

532 On this 24th day of September, 1952, came the attorney of the United States; the defendant, James S. Turner, by his attorney, C. P. Mitchell, Esquire, and the defendant Elaine A. Lee, by her attorney, DeLong Harris, Esquire; whereupon each of the defendant's Motion to Dismiss counts 10, 11, 12, 13, 14 and 15 of the indictment, coming on to be heard, after argument by counsel, is by the Court denied; thereupon each of the defendant's Motion for samples of evidence for independent analysis, coming on to be heard, after argument by counsel, is by the Court granted conditioned upon the examination being made at and under the supervision of the Internal Revenue; whereupon the defendant's Motion for a bill of particulars, coming on to be heard, after argument by counsel, is by the Court granted in part and denied in part.

* * * * * * * * *

Ruling on Motions

533 On this 24th day of September, 1952, came the attorney of the United States; the defendant, James S. Turner, by his attorney, C. P. Mitchell, Esquire, and the defendant, Elaine A. Lee, by her attorney, DeLong Harris, Esquire; whereupon the defendant, James S. Turner, Motion to strike, coming on to be heard, after argument by counsel, is by the Court denied; thereupon the defendant, Elaine A. Lee, Motion for severance, coming on to be heard, after argument by counsel, is by the Court denied.

* * * * * * * * *

535

Filed October 8, 1952

Criminal No. 1265-52

#1 JAMES S. TURNER.

Bill of Particulars

In compliance with the order of the Court granting, in part, defendant's motion for a bill of particulars, the government furnishes the following particulars with reference to the evidence to be offered by the government.

1. The eight capsules referred to in counts twelve and thirteen in the indictment were delivered to Eugene Major Nedbar at one and the same time as the seven capsules referred to in counts fourteen and fifteen in the indictment.

CHARLES M. IRELAN,
United States Attorney.

* * * * *

536

Filed October 8, 1952

Criminal No. 1265-52

#2 ELAINE A. LEE.

Bill of Particulars

In compliance with the order of the Court granting, in part, defendant's motion for a bill of particulars, the government furnishes the following particulars with reference to the evidence to be offered by the government.

1. The eight capsules referred to in counts twelve and thirteen in the indictment were delivered to Eugene Major Nedbar at one and the same time as the seven capsules referred to in counts fourteen and fifteen in the indictment.

CHARLES M. IRELAN,
United States Attorney.

* * * * *

541

Filed June 26, 1953

Criminal No. 1265-52

UNITED STATES OF AMERICA,

v.

JAMES S. TURNER.

Judgment and Commitment

On this 26th day of June, 1953 came the attorney for the government and the defendant appeared in person and ¹ by counsel, Curtis P. Mitchell, Esquire.

IT IS ADJUDGED that the defendant has been convicted upon his plea of ² not guilty and a verdict of guilty of the offenses of Violation of Title 26, U. S. Code, Sections 2553a, 2554a. Violation of Title 21, U. S. Code, Section 174 as charged ³ in Counts 12, 13, 16, and 17 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ⁴ Twenty

¹ Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

² Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

³ Insert "in count(s) number" if required.

⁴ Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

(20) months to Sixty (60) months, and to pay a fine of \$100.00 on Count Twelve; Twenty (20) months to Sixty (60) months, and to pay a fine of \$100.00 on Count Thirteen, to run concurrently with the sentence imposed on Count Twelve; Twenty (20) months to Sixty (60) months, and to pay a fine of \$100.00 on Count Sixteen, to take effect at the expiration of the sentence imposed on Count Twelve; Twenty (20) months to Sixty (60) months, and to pay a fine of \$100.00 on Count Seventeen, to run concurrently with the sentence imposed on Count Sixteen.

* * * * *

542

Filed June 26, 1953

Criminal No. 1265-52

UNITED STATES OF AMERICA,

v.

ELAINE A. LEE.

Judgment and Commitment

On this 26th day of June, 1953 came the attorney for the government and the defendant appeared in person and¹ by counsel, DeLong Harris, Esquire.

It Is ADJUDGED that the defendant has been convicted upon his plea of² not guilty and a verdict of guilty of the offenses of Violation of Title 26, U. S. Code, Sections 2553a, 2554a. Violation of Title 21, U. S. Code, Section 174 as charged³ in Counts 12, 13, 16, and 17 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient

¹ Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

² Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

³ Insert "in count(s) number" " if required.

cause to the contrary being shown or appearing to the Court,

IT IS ADJUDGED that the defendant is guilty as charged and convicted.

IT IS ADJUDGED that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ⁴ One (1) year to Three (3) years, and to pay a fine of \$100.00 on Count Twelve; One (1) year to Three (3) years, and to pay a fine of \$100.00 on Count Thirteen, to run concurrently with the sentence imposed on Count Twelve; One (1) year to Three (3) years, and to pay a fine of \$100.00 on Count Sixteen, to take effect at the expiration of the sentence imposed on Count Twelve; One (1) year to Three (3) years, and to pay a fine of \$100.00 on Count Seventeen, to run concurrently with the sentence imposed on Count Sixteen.

* * * * *

⁴ Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

1 **Excerpts from Testimony and Proceedings**

Tuesday, April 28, 1953.

The above-entitled cause came on for trial before Honorable Richmond B. Keech, United States District Judge, and a jury, at 11:00 o'clock a. m.

* * * * * * * * *

2 (Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Laughlin: Your Honor, I am doing this as an act of precaution. I don't know what your Honor's attitude will be.

In this case I find myself in this position: this is a 17-count indictment, your Honor.

The Court: Yes.

Mr. McLaughlin: If your Honor will notice, in the 6th count and the 7th count, the 8th count and the 9th count, the sale is supposed to be made to a girl by the name of Louise Rucker.

3 The court: I haven't noticed it, but I do notice that the 6th count says Louise Rucker, sir.

Mr. McLaughlin: Yes, and, of course, the 7th arose out of that. It is the same narcotics.

The court: Yes.

Mr. McLaughlin: And the 8th was on the 14th, and the 9th was on the 14th. Of course, the Government will have to ask for a dismissal of those counts. We won't proceed on those counts.

The Court: You are moving to dismiss as to which ones?

Mr. McLaughlin: Counts 6, 7, 8, and 9.

Mr. Harris: Your Honor, might not that be after the main jury is sworn?

Mr. McLaughlin: What?

Mr. Harris: Could you do that after the jury is sworn?

Mr. McLaughlin: It is immaterial to me. I just want to inform the Court. I don't want to get up and make any rash statements.

The Court: I think you are entitled to have the protection. We don't have to say it to them, but, when he comes back, I will understand that the motion to dismiss is made after that.

Jeopardy is what you mean?

Mr. Harris: Yes.

4 The Court: Counts 6, 7, 8 and 9 will be dismissed when the jury is sworn?

Mr. McLaughlin: Yes, your Honor.

* * * * *

Mr. McLaughlin: I have counts 1, 2 and 3, and the 7th, where the sales were made to a Major Nedab. Also counts 4 and 5 were made to Major Nedab.

The Court: Right.

Mr. McLaughlin: Now, in the 10th count——

The Court: I haven't gotten the 10th yet. 1, 2, 3, 4 and 5.

Mr. McLaughlin: Yes.

The Court: All right, sir.

Mr. McLaughlin: That I have enumerated so far, in those counts, in there, this Nedab was arrested for these offenses and, of course, has been sentenced, given a five-year sentence on them.

I have Nedab down in the lockup downstairs.

The Court: Yes, sir.

5 Mr. McLaughlin: I went down to talk to him yesterday about it, and he said he isn't going to testify. Well, now, I find myself in this position. Of course, he can't claim that he might incriminate himself because he has already been convicted of them. So I find myself in this position, whether or not to start off on these counts and call him, knowing that he is not going to testify, as he told me he was, and whether your Honor would compel him to testify, or give a reason that he refuses to testify.

Mr. Harris: I might suggests this: under those circumstances no claim of surprise can be made.

Mr. McLaughlin: No, that is true, too. I am merely saying this because I don't want to take advantage of anybody.

* * * * *

The Court: Let me see if I understand you. You say he has plead guilty?

Mr. McLaughlin: Yes, your Honor. He is doing five years, and for these sales, as I understand.

* * * * *

6 Mr. Harris: He is represented, I understand, by
7 Mr. William S. Thompson.

* * * * *

The Court: See if you can reach Mr. Thompson, Mr. Clerk.

* * * * *

The Court: Let me ask you this: would it be sensible to excuse the jury and bring this man in and see what he is going to say?

Mr. McLaughlin: Yes.

Mr. Harris: Is that going to help us?

The Court: I think if he can do it, it would be very helpful to your case or cause; I mean, if Mr. McLaughlin brings him.

* * * * *

The Court: If we are going to find out that this man is going to stand on his constitutional right, that is one thing; but, you are right, it is not a preliminary matter, but I don't believe you would want to object to it.

Mr. Harris: No, I won't object to it, but I don't want to be in the position of being a moving party in this matter.

The Court: No. I was just doing it because I thought it would be helpful to the defendant.

8 Mr. Harris: Yes.

* * * * *

Mr. Harris: I notice from the jacket that a motion as to Phillips was granted, wherein it appears that the transactions on April 22, I believe it was, involving a 7th and 8th capsule, was present. What the Government did in drawing the indictment was to split it; that is, to charge in four counts what really should have been charged in two.

Under that circumstance, I think, and I say this sincerely, a motion to dismiss all four of those counts should lie. I mean, I just wanted your Honor to get my position on it because I probably would have to make that motion after the jury has been sworn.

For this reason, here we have a count involving—well, take one involving selling, and one involving concealment, with only one handling transaction; how are they going to separate them.

The Court: What do you know about that, Mr. McLaughlin?

* * * * *

9 Mr. McLaughlin: What Mr. Harris is talking about, your Honor, involves the 12th, 13th, 14th and 15th counts of the indictment.

The transaction in regards to the 12th count, that is on April 22nd. This Nedab was supposed to go in the place and buy fifteen capsules.

The Court: On the 22nd?

Mr. McLaughlin: Yes.

When he came out, he turned over eight capsules. He turned over eight capsules to Officer Longo; and then Nedab is placed under arrest, and after he is placed under arrest he is searched and seven capsules, I believe, are found on his person; that is the 14th and 15th counts.

In the 12th count is where he went in and he came out and turned over eight capsules to Officer Longo.

The Court: And is supposed to have gotten fifteen?

Mr. McLaughlin: Yes, and later on, when he is turned over, he is searched and seven capsules are found
10 on him, and that includes counts 14 and 15.

Mr. Harris: I don't see how we can amend this thing to say fifteen, your Honor, as in and between four counts, two pairs of counts.

He alleged 7 and 8, and apparently what happened, he bought fifteen in one transaction. These people didn't transfer seven to him at one time and eight at another time.

You see what I am saying, your Honor?

The Court: You see, you have here, in Count 12, eight of the fifteen capsules.

Mr. McLaughlin: Yes, your Honor, undercover to Officer Longo.

The Court: And on 14 you have seven. That makes the fifteen, doesn't it?

Mr. McLaughlin: Yes, your Honor.

The Court: In other words, what is this, a holding out by him of the seven; is that what it is?

Mr. McLaughlin: Yes, your Honor.

Mr. Harris: That has nothing to do with these defendants, your Honor.

Mr. McLaughlin: What is that?

Mr. Harris: I said that would have no effect on the position of the defendants. Obviously the defendants did not make two transfers to the witness. He went in
11 one time and came out apparently with fifteen, so if any transfer did take place—we, of course, deny it—there was a transfer of fifteen and not seven and not eight. And I say that is an error that cannot be rectified here, and, therefore, all four of these counts must fall.

The Court: Where do you get your fourth one, now? I have got 12, 14 and 15.

Mr. McLaughlin: 12 and 13.

Mr. Harris: 12 and 13.

The Court: What has 13 to do with it?

Mr. McLaughlin: That is the same transaction as 12, your Honor.

Mr. Harris: 12 and 13, on the eight capsules, and 14 and 15 on the seven.

The Court: Under different provisions of the statute, is that it?

Mr. McLaughlin: Yes. But the same transaction.

Mr. Harris: The net result is they charged these people twice for the same thing.

The Court: I don't think you ought to charge them twice.

Mr. McLaughlin: No. It is just a division. I think His Honor can instruct the jury that the merging of the two counts is as to one transaction.

12 Mr. Harris: I don't think so. At the time we got the Bill of Particulars out—I have read so many cases on it, but the Government has permitted them to split a defense, and having alleged here that there was, in fact, a transfer of eight capsules, a proof of fifteen capsules would be at variance.

The Court: No, I would like to see that case. I doubt if I can merge them, Mr. Harris, but I don't think that that would be a bar.

Mr. Harris: Here is what happened, your Honor. Over in the lower court I had an occasion to do this: suppose there were fifteen capsules, and they were all transferred at one time; how can he prove what seven and eight they are talking about?

The Court: Suppose they lost seven of the fifteen? Suppose that they got them and then one of the co-defendants knocked them down the sewer and they were lost?

Mr. Harris: I don't think that they would be exactly analogous to our situation here.

Actually, and in truth, they have all fifteen, and there was, in fact, one transfer of fifteen.

The Court: Have you got any law on the merging of these counts?

Mr. McLaughlin: I will make a motion to dismiss
13 the 14th and 15th counts.

The Court: All right, sir.

Mr. Harris: Well, I mean, your Honor, my motion, of course, is to dismiss all of them.

The Court: All right, sir. I will deny your motion.

Mr. Harris: Well, we will have to go through this motion again.

The Court: That is all right, sir.

Mr. Harris: And maybe by that time I will have my case for your Honor. Because I just cannot see attempting to charge him with an offense, and then charging him with half of it.

The Court: Suppose you had an embezzlement of a million dollars, and you charged him with such portion as is proper?

Mr. Harris: That is too much money for me to think about.

Suppose we had a hundred dollars embezzlement and suppose they charged them in two counts with embezzling fifty.

The Court: I still think the government could, but I will be glad to hear you.

Mr. McLaughlin is going to move to dismiss as to 14 and 15, and we will have the consideration of 12 and 13 on the theory that you speak of. My present dis-
14 position would be to deny the motion, Mr. Harris.

Now where do we stand?

Mr. McLaughlin: Well, until this witness comes and we directly find out what the story is, the Government is ready to go forward on counts 12, 13, 16 and 17.

The Court: 12, 13, 16 and 17?

Mr. McLaughlin: Yes, your Honor.

The Court: That means four counts?

Mr. McLaughlin: 12, 13, 16 and 17.

The Court: We are one short here somewhere, aren't we? I have 12, 13, 16 and 17, which is four. We are still short something here, aren't we?

You told me 17, didn't you? Have any of these been previously dealt with?

Mr. McLaughlin: No, your Honor.

The Court: 17. So you have got to account for 13 going out temporarily, at least.

I think there are still two unaccounted for. Now I understand that you want to preserve 12, 13, 16 and 17?

We have got five counts so far as Major Nedab is concerned, and then you have a motion to dismiss 6, 7 and 8 and 9, and 14 and 15.

I am still two short.

Mr. Harris: Nothing was said about 10 and 11.
15 That would apply to me also. Nedab is the witness in that case.

Mr. McLaughlin: Yes, he is a witness in 10 and 11.

The Court: So we add 1, 2, 3, 4, 5, 10 and 11, which are in the same category?

Mr. McLaughlin: Yes, your Honor.

Mr. Harris. What are we going to do with 10 and 11; add them?

The Court: Add them to 1, 2, 3, 4 and 5.

* * * * *

19 Mr. Harris: Of course, I am doing this in the interest of trying to save time. Another point that I will raise, of course, is the sufficiency of the warrant itself, on its face.

The Court: That has been dealt with, hasn't it?

Mr. McLaughlin: Yes, all the preliminary motions have been argued.

The Court: You can protect yourself on the record as to that, but I will not re-hear the motions.

* * * * *

21 Mr. Harris: Yes, sir. Well, on the basis that the warrant was fatally deficient on its face and does not within its four corners state either the ground of its is-

suance or the probable cause for its issuance; that the copy left with the defendant Turner, I believe, or in the premises where the raid occurred, did not contain or there
 22 was not attached to this defective warrant any affidavit or other paper purporting to state the grounds or the probable cause for the issuance.

I don't know whether under Your Honor's ruling I am precluded from urging to your Honor at this time an additional ground for the insufficiency of that warrant, and I would say this, that in addition, and this probably—I don't know whether I urged this or not at the last hearing—when we did discover the basis for the issuance of the warrant, there was an affidavit that had been sworn out, and of course which was not attached to the warrant, and that was the only basis the Commissioner or Magistrate issued the warrant on.

The affidavit for the grounds upon which it was issued, did not state that anybody, the witness, the affiant, or informer or what, ever purchased any narcotics from either of these defendants. The affidavit or the witnesses did not know of their own knowledge that any narocctic was ever kept in these premises.

The thing is, I believe—I wish, sincerely, that your Honor would look at it.

The Court: No, I am not going over it again, Mr. Harris, and I think the reason is clear to you. The rules specifically provide that these matters be dealt with preliminarily for
 23 the purpose of not unduly delaying the proceeding, and, if I should re-try the whole thing, it would mean that all the Court is doing is doing double work and defeating the purpose of the rule.

The only thing I was concerned with was to make sure your point was covered and you would be protected.

Now I see that Mr. Thompson is back. Mr. Thompson, are you ready?

Mr. Thompson: Yes, sir.

* * * * *

The Court: Mr. Thompson, I was advised, I believe by Mr. Harris, that you did represent or had represented Eugene Major Nedab.

Mr. Thompson: That is right.

The Court: And I have been advised by the District Attorney that he has advice from Nedab that he will refuse to testify in this case.

I said to these gentlemen that his refusal could be dealt with, depending upon what the basis of his refusal was.

Now, if he is going to plead that testifying in this case will tend to incriminate him, of course, that is one thing when properly entered. I would be required to and
24 want to respect that.

* * * * *

25 The Court: Now, he does propose to stand on his constitutional grounds?

Mr. Thompson: He does, your Honor. Must I enter my appearance in this, or what is my position?

* * * * *

The Court: What is the situation in view of that?

Mr McLaughlin. In view of that, your Honor, the Government will go on and present Counts 12, 13, 16 and 17.

The Court: And you will dismiss the other counts?

Mr. McLaughlin: Yes, your Honor.

* * * * *

50 **Officer Dante Longo**

was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McLaughlin:

* * * * *

Q. You are a member of the Metropolitan Police Department? A. Yes, sir.

51 Q. And assigned to any particular detail? A. Narcotics Squad.

Q. Were you so employed during the month of April of 1952? A. Yes, sir, I was.

Q. Now, on April 22 of 1952, do you recall seeing a man by the name of Mr. Nedab? A. Yes, sir, I do.

Q. And do you recall on April 22 what time that you first saw him? A. I first saw him about ten minutes after twelve, that is p.m.

Q. Did you see him again that night around six? A. Yes, sir, I did. I saw him about 6:20 p.m.

Q. And where did you see Mr. Nedab on April 22, about 6 p. m.? A. About 6:20, sir.

Q. 6:20, rather. I saw him on Connecticut Avenue; it was either M. Street or N. Street, Northwest, at a flower shop where he was employed.

Q. Did you go any place with him?

* * * * *

52 A. Well, about 6:20 p. m. I met Nedab at Connecticut Avenue between N and M, Northwest, and from there we went to 8th and Taylor Streets, Northwest, where I parked my car on the southeast corner, and that was about 6:45 p. m.

I gave Nedab some money to purchase some narcotics for me.

53 Q. How much money did you give him? A. I gave him \$20.00 Metropolitan Police Department advance funds, of which the serial numbers were recorded, and which was marked with a fluorescent powder.

Q. Who marked that money prior to meeting Mr. Nedab? A. Officer Holcomb in the Office of Narcotics Squad.

* * * * *

Q. Now, at the time that you gave Mr. Nedab the \$20.00, did you give him any order form issued by the Secretary of Treasury for the purpose of purchasing narcotics? A. No, sir, I did not.

Q. After you gave him the \$20.00, then what happened?

* * * * *

The Witness: Nedab got out of the car and walked north on Taylor Street and disappeared from my view—
54 pardon me, on 8th Street, and then disappeared from my view.

By Mr. McLaughlin:

Q. Did there come a time when he came back? A. Yes, sir. It was about a couple of minutes to seven.

Q. And when he came back what did he do? A. Well, he entered my automobile and handed me eight capsules, each containing a white powder. Then it was prearranged that if I had—

Mr. Harris: Objection.

The Court: As refers to arrangements, what happened?

The Witness: We drove off and I went to 7th and Taylor Streets, Northwest, where Nedab was placed under arrest by Detective Sergeant Gabrys and Agent Andrews of the Federal Bureau of Narcotics.

By Mr. McLaughlin:

Q. I will show you Government's Exhibit marked for identification as number one. I ask you, Mr. Longo, whether or not you can identify that? A. I can identify the envelope by my initials and the date on the envelope.

Q. When did you put your name and your initials on that Government's Exhibit 1? A. Immediately upon returning to the office of the Narcotics Squad.

55 (The envelope referred to was previously marked Government's Exhibit No. 1 for identification.)

By Mr. McLaughlin:

Q. And what did you do with the eight capsules that you had received from Mr. Nedab? A. I immediately turned the evidence over to Detective Sergeant Gabrys at the time of Nedab's arrest at 7th and Taylor Streets, Northwest.

Q. At the time they were turned over to you, were there any government stamps of any kind on the eight capsules?
A. No, sir, there were not.

Q. With reference to the eight capsules and the envelope that you initialled, did you see Officer Gabrys do anything with the eight capsules that you had given to him? Yes, sir, I did.

Q. I mean with regards to that envelope? A. Yes, sir. Upon entering at the office of the Narcotics Squad after the arrest of Nedab, Sergeant Gabrys performed the preliminary field test, and after the field test Sergeant Gabrys and I both initialled the envelope, and the kleenex which the capsules came in, and Sergeant Gabrys placed the kleenex containing the eight capsules into the small cream-colored envelope and he sealed it.

* * * * *

56 Cross-examination.

By Mr. Harris:

Q. Mr. Longo, you say that on April 22nd you went up to a flower shop where Nedab worked and there you met him? A. That is correct, sir.

Q. And your purpose was to buy some narcotics from Nedab, was it? Yes, sir, that is right.

Q. And he had sold you some before? A. Yes, sir, he has.

* * * * *

Q. You just knew him as a seller of Heroin? A. That is correct, sir.

Redirect examination.

By Mr. McLaughlin:

* * * * *

57 Q. When had you bought narcotics from Nedab before? A. On April 2, April 4, April 7, April 9, and April 22.

* * * * *

58 Q. On these other occasions that you said you
bought narcotics from Nedab, in what vicinity of
the City were these narcotics delivered to you by Nedab?

A. All made by 8th and Taylor Streets, Northwest.

* * * * *

64 Paul Collins

was called as a witness for and on behalf of the
65 United States and, having been first duly sworn,
was examined and testified as follows:

Direct examination.

By Mr. McLaughlin:

* * * * *

Q. And where are you employed? A. In the Real Estate
Tax Division of the Assessor's Office of the District of
Columbia.

Q. As a result of a subpoena duces tecum served on you
from the records of the Tax Office of the District of Co-
lumbia, can you tell us who was the owner of premises 4107
8th Street Northwest, in the District of Columbia, on
April 22 of 1952? A. Yes, sir. We had that title vested,
according to our records, in the names of James S. Turner
and Dorothy D. Turner, as tenants by the entirety.

* * * * *

Cross-examination.

By Mr. Harris:

Q. Mr. Collins, you don't know this defendant, do you?

A. No, I don't know the defendant.

66 Q. You have no way of knowing whether the
James S. Turner referred to in your records is one
and the same with this James S. Turner, who is the defend-
ant in this cause? A. No, I wouldn't have that knowledge.

* * * * *

Officer Joseph A. Gabrys

was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McLaughlin:

* * * * *

Q. And you are a member of the Metropolitan Police Department? A. Yes, sir, I am.

Q. And assigned to what particular detail? A. The Narcotics Squad.

Q. Calling your attention to April 22 last year, 67 1952, do you recall seeing Officer Longo on that evening? A. Yes, I did.

Q. And approximately what time would you say you saw him on the evening of April 22 of 1952? A. I saw him first at about five o'clock in the evening.

Q. And where was he at that time? A. This was in the office of the Narcotics Squad.

Q. Did there come a time when you saw him after that on the streets in the District of Columbia? A. Yes, sir.

Q. When and where was that? A. I saw him at about 6:40 p. m. on the same day at 8th and Taylor Streets, Northwest.

Q. Was that in the District of Columbia? A. Yes, sir.

Q. Did you see anyone else with him at that time? A. Yes, I did.

Q. Who did you see with him? A. I saw a colored man later on identified as Major Eugene Nedab.

Q. Did you have them under your observation at that time? A. Yes, sir, I had.

Q. What did they do, or either one of them do, if 68 anything, while under your observation? A. Officer Longo and Nedab, in Officer Longo's automobile, arrived on the southeast corner of 8th Street, at Taylor Street.

Officer Longo pulled over to the curb and parked his car. Nedab got out of the car and crossed Taylor Street and proceeded north on 8th Street, on the east sidewalk, and disappeared from my view.

Q. Did there come a time when you saw him again?
A. Yes, sir.

Q. What period would you say elapsed until the time you saw them the second time? A. I would say approximately five minutes.

Q. Where and what did he do, if anything, at the time you saw him secondly? A. The next time I saw Nedab he was walking on the east sidewalk of 8th Street, south towards Officer Longo's automobile.

Q. Now, at that time did you know where the house located at 4107 8th Street, Northwest, was, in the District of Columbia? A. Yes, sir.

Q. When you saw Mr. Nedab get out of Longo's car, did he go in the direction of those premises? A. Yes, he did.

69 Q. And when you saw him returning, was he returning from the direction of those premises? A. That is correct.

Q. After you saw him return, did you place Nedab under arrest?

* * * * *

The Court: Did you place him under arrest, sir?

The Witness: Sometime afterward, yes, sir.

* * * * *

Q. When did you place him under arrest? A. About two minutes after I saw him returning from the northerly direction on 8th Street.

Q. At the time you placed Nedab under arrest, where was he? A. He was in the automobile of Officer Longo at the intersections of 7th and Taylor Street, on the southwest corner.

Q. Now, previous to going to that location on the night of April 22nd of 1952, did you or one of those accompanying you have a search warrant for those premises? A. Yes, sir.

70 Q. After you placed the defendant Nedab under arrest, where did you go? A. I remained at the point of arrest for a short while with the defendant Nedab, and then I turned Nedab over to another officer and I then went to 4107 8th Street, Northwest.

Q. Was there anyone with you at the time that you went to 4107 8th Street, Northwest? A. Other officers there were already in. There was no one actually with me.

* * * * *

Q. Now, what did you observe when you entered those premises at 4107?

* * * * *

Mr. Harris: Your Honor, I desire now to renew my objection to matters and things observed in these premises, for the reason that the search warrant was void and invalid for the reasons that I have already stated to your Honor.

* * * * *

Mr. Harris: I wish to object to any testimony as to what he observed in the premises.

71 The Court: All right, sir, and so the record will be straight, this is the matter which you already addressed the Court about, and has been the subject of a motion determined upon previously by another judge of this Court; is that right?

Mr. Harris: Yes, sir. And for the additional reason that doesn't appear here, that this gentleman entered those premises under the color of a warrant.

He states that other officers, or the entry had already been made and other officers were present, and it doesn't appear here that he did go into the premises under the authority of the search warrant.

The Court: All right, sir.

Mr. Harris: I take it that, your Honor, is also denied?

The Court: Yes.

* * * * *

By Mr. McLaughlin:

Q. I will ask you, officer, you say you returned after placing Nedab under arrest, and then you entered those premises 4107 8th Street, Northwest? A. Yes, sir.

Q. On 8th Street? A. 8th, yes, sir.

Q. At the time you entered those premises, had
72 you been in the immediate vicinity of those premises with other officers and marshals who had a search warrant for those premises? A. Yes.

Q. At the time that you entered those premises were you entering under that search warrant? A. That is correct, yes, sir.

Q. Now, what did you observe when you entered the premises? A. I observed other officers who were in the group. Agent Andrews, two deputy marshals, Officer Pinetta, Officer Holcomb, Officer Wurms, Officer Brewer, Agent Fulmer. They were all in there. The defendants Turner and Lee, they were sitting in on a couch in the living room of that address which was located on the first floor in the front part of the room.

Officer Holcomb was examining some money at the time with a fluorescent lamp or an infrared lamp, and also comparing serial numbers against a list that he had.

That is about all.

Q. Now, did you see Officer or Agent Andrews in those premises? A. Yes, sir, I did.

Q. Now, while you were in those premises did you
73 go in any of the rooms? A. Yes, I did.

What rooms did you go in? A. I was in all of the rooms at various times.

Q. Did there come a time when you were in the kitchen? A. Yes, sir.

Q. Where was the kitchen located in those premises?

A. The kitchen was located on the first floor and in the back of the house.

Q. Now, at the time that you were in the kitchen were any other officers or agents in there? A. Yes, there were. I particularly recall Agent Andrew.

Q. Now, did Agent Andrew do anything while you were there in the kitchen that you observed? A. Yes.

Q. What did he do, if anything? A. Agent Andrew recovered from among some dishes that were in a sink in this kitchen a small Sal Hepatica bottle which contained a large number of capsules. In addition to that he recovered a second Sal Hepatica bottle from a shelf of a cupboard that was built up over where the sink was.

Q. And what did Agent Andrew do with those bottles after he recovered them in the kitchen as you have
74 stated? A. He interviewed the defendants as to the ownership of those bottles and he brought them in to where Officer Holcomb placed them under the infrared ray light, and on one of these he discovered some evidence of fluorescence, like the fluorescent powder which we had used to mark the money.

Q. Now going back to the time that you placed the defendant—that is, Mr. Nedab—under arrest in Mr. Longo's car, at that time did you receive anything from Mr. Longo? A. Yes, sir, I did.

Q. I will show you Government's Exhibit marked for identification number 1, and ask you whether or not you can identify that? A. Yes, sir, I can.

Q. You identify Government's Exhibit marked for identification number 1 as what? A. As an envelope into which I placed a piece of kleenex which contained, I believe, eight capsules of white powder.

Q. And who did you receive those eight capsules of white powder from? A. From Officer Longo.

Q. Is there any government stamps of any kind upon the capsules or the tissue paper? A. No, sir, there wasn't.

75 Q. What did you do with Government's Exhibit 1 after you received it from Officer Longo? A. I made a preliminary field examination on the contents of one or two of the capsules, and then——

Mr. Harris: I object.

Mr. McLaughlin: I think he is going all right so far. I won't press him any further, your Honor.

The Court: All right.

* * * * *

Q. After you made the field test, what did you do with the eight capsules you received from Officer Longo? A. I placed them into this envelope which Officer Longo and I both marked.

Q. I see.

Mr. McLaughlin: Will you mark this as Government's Exhibit 1-a for identification?

(The exhibit referred to was marked Government's Exhibit No. 1-a for identification.)

* * * * *

77 Q. Now, after you sealed the Government's Exhibit 1-a, what did you do with it? A. I placed this into the office safe.

Q. Did you turn it over to anyone? A. Yes, I did.

Q. Who did you turn it over to? A. To the United States Chemist.

Q. Mr. Young? A. Yes, sir.

Q. Now, you testified that you saw or observed Agent Andrew recover a Sal Hepatica bottle with capsules? A. Yes, sir, I did.

Q. You did? A. Yes, sir.

Mr. McLaughlin: Will you mark this Government's Exhibit for identification number 2?

(The exhibit referred to was marked Government's Exhibit No. 2 for identification.)

By Mr. McLaughlin:

Q. I show you this exhibit, marked Government's Exhibit for identification number 2, and ask you
78 whether or not you can identify that? A. Yes, sir, I can.

Q. And how do you identify Government's Exhibit No. 2? A. By my initials scratched on the lid.

Q. And you identify Government's Exhibit No. 2 as what? A. As the small Sal Hapatica jar that Agent Andrew recovered from the sink in the kitchen of 4107 8th Street, Northwest.

Q. And did it contain anything at that time? A. Yes, sir. It contained 72 capsules, each of them containing a white powder.

Q. Now, were there any government stamps of any kind on the capsules or the Sal Hepatica bottle? A. No, sir, there were not.

Mr. McLaughlin: Will you mark this Government's Exhibit No. 2-a for identification?

(The exhibit referred to was marked Government's Exhibit No. 2-a for identification.)

By Mr. McLaughlin:

Q. I show you Government's Exhibit for identification marked Government's 2-a, and ask you whether or not you can identify that? A. Yes, sir, I do.

Q. You identify Government's Exhibit 2-a as what?
79 Mr. Harris: May we approach the bench?

The Court: Yes, sir.

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Harris: I noticed in the opening statement Mr. McLaughlin mentioned something about a second Sal Hepatica bottle containing some traces of drugs. I didn't say anything at that time, but at this time, your Honor, I wish to object not only to its introduction but to its exhibition and

testimony in relation to that bottle, for the reason that we are not here charged with any second bottle. We are charged with the 72 capsules, and as I understand it, Government's Exhibit 2 is a bottle containing 71 capsules, or something of the sort.

I therefore see no reason why this second bottle should be exhibited, or any testimony with relation to the second bottle.

* * * * *

81 The Court: Where was this one now, that you are talking about, found?

Mr. McLaughlin: In the same kitchen, in the cupboard; the very same kitchen.

The Court: I think I will admit it.

* * * * *

By Mr. McLaughlin:

* * * * *

Q. You identify Government's Exhibit 2-a as what? A. As a small Sal Hepatica jar which Officer Andrew recovered from the kitchen of 4107 8th Street, Northwest.

82 Q. And you say the kitchen—was that the same kitchen that Government's Exhibit 2 was recovered from by Officer Andrew? A. Yes, sir.

* * * * *

Q. Who removed Government's Exhibit 8 and 2-a from those premises, 4107 8th Street, Northwest? A. Agent Andrew.

Q. Did there come a time when they were turned over to you? A. Yes, sir.

Q. When and where was that? A. It was in the office of the Narcotic Squad, later that same evening.

Q. On April 22 of 1952? A. Yes, sir.

83 Q. After Government's Exhibit 2 and 2-a were turned over to you by officer or Agent Andrew, what did you do with them? A. I made a preliminary field examination on the contents of some of these capsules.

Q. And what did you do after that with the two exhibits, 2 and 2-a? A. I then placed these two exhibits into a larger manila envelope which I marked and sealed with wax.

Q. You sealed that? A. Yes, with wax.

Mr. McLaughlin: Will you mark this Government's Exhibit 2-b for identification?

(The exhibit referred was marked Government's Exhibit 2-b for identification.)

By Mr. McLaughlin:

Q. I show you Government's Exhibit, marked for identification 2-b, and ask you whether or not you identify that?

A. Yes.

Q. And you identify Government's Exhibit 2-b as
84 what? A. As the envelope into which I placed the two glass vials.

Q. That is, Government's Exhibit 2 and 2-a? A. Yes, sir.

Q. And after you placed Government's Exhibit 2 and 2-a into Government's Exhibit 2-b, just tell us what preparations you went through? A. I then sealed the envelope with wax and I placed the envelope containing the two bottles into the office safe.

Q. What did you do with them after that? A. They remained in the office safe until April 25, at which time I personally delivered them to the United States Chemist.

Q. And that is Mr. Young? A. Yes, sir.

Q. Officer, did you have an occasion to talk to either one or both of the defendants that evening of April 22 of 1952? A. Yes, I did have.

Q. And when and where did you talk, would you say, to the defendant James Turner? A. I talked to him at 4107 8th Street, Northwest.

Q. And what conversation, if any, did you have with him at that time in reference to the narcotics that
85 were found in those premises?

Mr. Harris: If your Honor please, I think at this time we should be permitted to examine this witness preliminarily, under the Jackson case.

* * * * *

86 The Court: Suppose you verify it and see if he is going to talk about that night. I assume you have no objection to that, Mr. Harris?

Mr. Harris: Well, I don't understand that he is going to testify that this man was ever deprived of his constitutional rights.

The Court: If that is your objection, I will overrule it, sir.

* * * * *

The Court: We will go forward, then. But his real objection is that he was not advised of his constitutional rights.

87 The Supreme Court has said that is not necessary.

88 The Court: We will go forward.

(Counsel returned to the trial table.)

By Mr. McLaughlin:

Q. Officer, I believe I asked you if you had any conversation with James Turner, the defendant here? A. Yes, I did.

Q. When and where did you first talk to the defendant Turner on April 22 of 1952? A. At 4107 8th Street, Northwest.

89 Q. And that was how long, would you say, after you entered those premises? A. Very shortly afterwards; possibly a minute or two.

Q. What conversation, if any, did you have with the defendant Turner at that time? A. I asked Defendant Turner if he knew anything about the sale of narcotics or narcotic drugs that had been made in those premises just a short while prior to that by Nedab.

The Defendant stated he knew nothing at all about any sale of narcotic drugs, or narcotic drugs in any way.

Q. Did you have any conversation with him as to what he was doing there? A. Yes.

Q. What was that? A. He stated that he had been there earlier in the evening and had taken his dog to a veterinary and had returned from taking the dog to the veterinary.

He denied living there. He stated that he had lived there at one time, up to about two weeks prior to that, but he was not living there any longer.

Q. Did you have any conversation with him as to who owned those premises? A. Yes. I believe he denied that he owned the premises. As I recall, he did deny owning the premises.

90 Q. When you talked to the defendant James Turner, what part of those premises did he tell you he occupied two weeks prior to April 22 of 1952? A. He stated that he had occupied the room that we were in.

Q. Which room was that? A. This was a bedroom located on the first floor and the front room.

Q. And where was the kitchen in reference to that bedroom? A. It was just immediately behind and to one side of the building.

Q. And do you know, or can you tell us whether or not there was more than one kitchen in those premises? A. To the best of my recollection there was only this one.

Q. Did you have any conversation with the defendant James Turner about the co-defendant, Elaine Lee? A. I may have. I don't recall particularly any conversation about her.

Q. After you talked to the defendant James Turner did there come a time when you talked to the defendant Elaine Lee? A. Yes.

91 Q. When and where was that? A. I first talked to her at 4107 8th Street, at the time——

Q. What time would you say that was? A. It was shortly after I entered the house, the building.

Q. What conversation did you have with Elaine Lee? A.
I—

Mr. Harris: May we approach the bench, your Honor?
The Court: Yes, sir.

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Harris: Right at this point, your Honor, I am at an extreme disadvantage. There is a conflict of interests between the rights and interests of these two defendants, as your Honor could possibly well appreciate.

Now, my client actually is Lee.

* * * * *
93 Mr. Harris: I am appearing for Mr. Mitchell, your Honor, for the other defendant. As your Honor knows, Mr. Mitchell represents this other man.

The Court: Yes.

Mr. Harris: But I am telling you that there is a conflict of interests between the rights of these two defendants, and I am at a disadvantage for the reason that now is one of the instances, one of those instances where now the testimony of Lee—

The Court: Mr. Harris—and I will have this record read to Mr. Mitchell—Mr. Mitchell came to my office—

Mr. Harris: I am appearing for Mr. Mitchell, but I am not saying—technically I represent everybody here, I am going forward for everybody. Your Honor understands that?

The Court: No, I don't understand, sir, because I am at a complete and unadulterated loss to understand the statement you now make in the wake of what transpires.

Now you either do represent the two defendants or you don't. Now, what is the fact, sir?

Mr. Harris: I do represent the two of them.

The Court: All right.

Mr. Harris: But can your Honor appreciate my situation, your Honor?

The Court: I want to appreciate it but I want the
94 record to be straight.

* * * * *

The Court: Do you desire to sign this praecipe?

Mr. Harris: Oh, sure.

* * * * *

95 Mr. Harris: There is no question I am going forward on behalf of Mr. Mitchell, but this is my situation, your Honor: there is a manifest conflict of interests here.

For instance, right now, a statement on behalf of the defendant Lee is about to be introduced as against perhaps both of these defendants.

The Court: No, I am going to instruct this—if you have any hesitancy about that, I am going to instruct, of course, that any statement made by one is applicable to that one and not to the other.

Mr. Harris: That is true, but don't you see the disadvantage before this jury that I would be placed in asking that that be done while representing both of these defendants?

The Court: I will state that myself. Is that your only problem?

Mr. Harris: That is my problem.

The Court: Do you understand?

Mr. McLaughlin: Oh, absolutely. In other words, I will even go so far as to say "was she alone or was he there, or what"?

The Court: I will save Mr. Harris from having to do that. And what I will ask you to do, if you find yourself in a position where you think that even might occur,
96 you come back to me and I will take the responsibility.

* * * * *

(Counsel returned to the trial table.)

By Mr. McLaughlin:

Q. I believe I asked you, you said that you talked to the defendant Elaine Lee a short time after you entered the premises 4107 8th Street?

The Court: Mr. McLaughlin, I am going to interrupt at this point to make a statement to the jury.

Mr. McLaughlin: Yes, sir.

The Court: Ladies and gentlemen of the jury, I don't know whether the testimony will be or will not be that there were certain statements made by the defendant Lee, and there were certain statements possibly made by the defendant Turner. You will understand that if Lee makes any statement which the officer relates, that that statement is applicable to Lee, not to Turner.

If Turner makes a statement, that statement will be as to Turner and not as to Lee.

In other words, A as to A, and B as to B.

Excuse me, Mr. McLaughlin.

Mr. McLaughlin: Surely, your Honor.

By Mr. McLaughlin:

Q. Did you talk to her while you were in the
97 premises? A. Yes, I did.

Q. And who was present at the time you talked to her? A. Exactly I don't recall. Officer Holcomb, for one, was there.

Q. Was the defendant James Turner there? A. Yes, I believe he was present in the room at the time.

Q. Was he in the immediate vicinity, within hearing distance? A. Yes.

Q. What conversation if any did you have with Elaine Lee at that time? A. I first asked Elaine Lee to explain the money which had been recovered by Officer Longo. She had no explanation for that. She didn't know how she came into possession of it.

Q. She said the money was recovered by whom? A. Officer Holcomb. I also asked her about the purchase of narcotic drugs that had been made from 4107 8th Street, and she stated she didn't know anything at all about any narcotic drugs having been sold there.

Then after Agent Andrew found the two glass vials in the kitchen, I asked her about those, and she made

98 no explanation; she denied ever having seen them or knowing anything at all about them.

And even after her hands were examined and there was evidence of the fluorescent powder found on her hands and also on the top of one of these bottles, she stated she didn't know anything at all about how those things came about, at that time.

Q. Did you talk to her again that night? A. Yes.

Q. And when and where was that? A. It was later on in the evening, approximately 11 or 11:30, somewhere along in there, at the Woman's Bureau.

Q. And what conversation did you have? In other words, was the defendant James Turner there at that time? A. No, at this time he was not.

Q. What conversation did you have with the defendant Elaine Lee at the Women's Bureau on the night of April 22, and I believe you said about 11 p.m.?

* * * * *

A. She said that she had sold fifteen capsules of powder, of white powder, to Nedab, and that she had sold
99 him that for \$15.00.

Q. Did she say when? A. Yes. She said just before we had arrived there.

Mr. Harris: Your Honor, again, may we approach the bench?

The Court: Yes, sir.

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Harris: I object to this testimony and this line of testimony, and move that it be stricken, for this reason. your Honor: there is no proof of any corpus here, and apparently what amounts to a conviction is being introduced by oral confession, before the proof of corpus.

* * * * *

100 The Court: And why, sir?

Mr. Harris: Because there is no proof that there has been any of the prohibitive narcotic drugs ever present

anywhere on any of these premises, or that any sale of any narcotic has been made.

* * * * *

101 Mr. McLaughlin:

* * * * *

Well, I can call the Chemist out of turn.

The Court: Do you want that done, Mr. Harris?

Mr. McLaughlin: I think, if your Honor please, I think the law is such that your Honor can say or give the prosecutor the right to go ahead subject to connecting up and then to rule out if he doesn't.

Because I say at this time I can prove it. I have the doctor here and it is just a question of inconvenience.

The Court: I don't think Mr. Harris would challenge it if you say that.

Mr. Harris: But still on behalf of the defendant James Turner, he is in a position where a co-defendant is admitting—

The Court: What is that?

Mr. Harris: He is in this position, with this impression going to the jury. A woman charged with him as co-defendant is now admitting that she made the sale of a narcotic.

Mr. McLaughlin: What?

The Court: That is correct, sir, if they believe
102 what the officer states.

But I have also said to the jury that any admission made by her is as to her and not as to Turner.

Mr. Harris: According to the opening statement of Mr. McLaughlin, I don't know anything about the statement but as I recall the opening statement of Mr. McLaughlin—and I know the proof will go along what he has outlined in his opening statement—he says that Lee stated that she was working for this defendant at the time, and that she was there as an accommodation to the defendant Turner, and that she made this sale while he was downtown, or something of the sort.

Is that substantially what you said in your opening statement?

Mr. McLaughlin: I didn't say she made the sale while he was downtown. I said that she was there; that he was going downtown or something.

Mr. Harris: Said he was there what?

Mr. McLaughlin: I will put him in the house.

The Court: Well, the instant question is whether we should permit this, what may appear to be a confession, to come in at this time. That is the question, isn't it, Mr. Harris?

Mr. Harris: Yes, your Honor.

The Court: Well, whether I have a right to receive
103 it subject to connect that up.

Mr. Harris: The second situation, your Honor—

The Court: Let's take the first one and try to dispose of that.

Mr. Harris: I am still on that same point, your Honor.

The Court: All right.

Mr. Harris: Here is a co-defendant which we have no right—when I say “we” I am speaking on behalf of James Turner—we have no right to cross-examine her and put her on the stand with regards to her particular confession; and still, even though your Honor—thank your Honor for having given a cautionary instruction, I still say the jurors are human, and when this statement of this co-defendant goes in saying that she has, as an accommodation for the defendant Turner, made this sale or transfer, as the case may be, to Major Eugene Nedab, of fifteen capsules, why, our position on behalf of Turner will then be almost hopeless.

* * * * *

104 The Court: Are you in a position now to call the doctor for the purpose of showing the test?

Mr. McLaughlin: Yes.

The Court: Well, if you insist, Mr. Harris, we will interrupt this and call the doctor so we can bring the record

105 straight, then, Mr. Harris.

* * * * *

107 (Counsel returned to the trial table.)

Mr. McLaughlin: Call Doctor Young. Whereupon,

James L. Young

was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McLaughlin:

* * * * *

108 Q. Where are you employed, Mr. Young? A.
United States Treasury Department.

* * * * *

Q. And what is the nature of your work at the Treasury Department? A. I am a Chemist.

* * * * *

Mr. Harris: We will stipulate as to the qualifications of Doctor Young.

* * * * *

By Mr. McLaughlin:

Q. Doctor, I show you Government's Exhibit marked first for identification 1-a and ask you whether or not you identify that? A. I do.

* * * * *

110 Q. You identify Government's Exhibit 1-a as what?
A. An envelope handed to me by Sergeant Gabrys on the 23rd day of April, 1952.

Q. Now, is there any difference in that envelope today than when it was turned over to you by Officer Gabrys?
A. Yes, there is.

Q. What is the difference in the envelope? A. Well, at that time it was wax-sealed and the envelope was intact.

Q. Now, who opened the envelope? A. I did.

Q. And how did you open it? A. I cut the top off.

Q. When you cut the top of the envelope, Government's Exhibit 1-a, did it contain anything? A. Yes. It contained a coin envelope which, in turn, contained a piece of tissue paper.

* * * * *

111 Q. What did it contain? A. The tissue contained eight gelatin capsules containing a white powder.

Q. Did you make an analysis of those eight capsules?
A. I did.

Q. And what did they contain? A. They contained a mixture of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, and the net weight of the contents was 13 grains. They were individually analyzed.

Q. And is Heroin a derivative of Opium? A. It is, sir.

Q. Showing you Government's Exhibit 2-b, I believe, for identification, I ask you whether or not you can identify that? A. I can.

Q. You identify Government's Exhibit 2-b as what? A. It is an envelope that was handed to me by Officer Holcomb of the Narcotics Squad of the Metropolitan Police Department, on the 25th day of April, 1952.

* * * * *

112 Q. What did you do with the envelope, if anything? A. I cut the top of the envelope open and removed the contents.

Q. And what did Government's Exhibit 2-b contain when you opened it? A. It contained these two jars; glass jars, which I initialled at that time.

* * * * *

113 Q. Showing you Government's Exhibit 2, I ask you whether or not you can identify that? A. I can.

Q. And you identified Government's Exhibit 2 as what? A. Well, it is a Sal Hepatica jar that contained 72 capsules containing white powder.

Q. And is that one of the bottles, you say, or jars, that were in Government's Exhibit 2-b at the time you received it? A. It is.

Q. Now, did you make any analysis of the capsules that were in Government's Exhibit 2? A. I did. I individually analyzed the capsules.

Q. And what did they contain? A. They contained a mixture of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, and the net weight of the contents was 112 grains.

* * * * *

114 Q. Showing you Government's Exhibit 2-a, I will ask you whether or not you can identify that?

Mr. Harris: Objection.

The Court: For the reasons heretofore stated, sir?

Mr. Harris: Yes sir.

The Court: Yes. You may proceed, Mr. McLaughlin.

By Mr. McLaughlin:

Q. Do you identify Government's Exhibit 2-a? A. I do.

Q. And you identify that as what? A. Well, it is one of the jars that was contained in this Exhibit 2-b.

Q. What did you do, if anything, with Government's Exhibit 2-a? A. Well, I dusted out the walls of the jar and found it contained traces of Heroin Hydrochloride and Quinine.

Mr. Mitchell: Object to that, your Honor.

The Court: Suppose you come to the bench?

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Mitchell: Unfortunately, I come in the middle.

The Court: That is all right.

Mr. Mitchell: It occurs to me, if your Honor please, that the Rule De Minimis must apply in an instance of
115 this sort.

The Court: As a matter of fact, I don't think it is important as far as its contents are concerned. Frankly, I thought it was a part of the setting, and that the only purpose of it was that.

Mr. Harris: That is why I objected to the admission of it.

The Court: I think I said at the time it would be part of the setting, but I don't think this is important as far as its contents are concerned.

Mr. McLaughlin: No.

* * * * *

Mr. Mitchell: My concern is, I mean, is whether the jury will be prejudiced by so many things having traces, and then conclude, of course——

The Court: I don't think you are going to have many things, unless I didn't hear the opening statement right. I think this is the only trace you are going to have.

Mr. Mitchell: That is right.

The Court: I would like for you to verify that.

Mr. McLaughlin: That is true.

116 The Court: All right.

Mr. Harris: They are both Sal Hepatica bottles and I think the object is to show that here is a storehouse in which they kept stuff in small Sal Hepatica bottles. You have got one empty container with traces, and which contains 72 capsules.

The Court: I think for its purpose, it is admissible.

(Counsel returned to the trial table.)

* * * * *

117 The Court: Doctor, when you say "trace" that means no appreciable amount, doesn't it?

The Witness: That is correct. It is not feasibly weighable, but it is definitely identifiable.

* * * * *

118 Cross-examination.

By Mr. Harris:

* * * * *

120 Q. And do I understand you to say that you take out a quantity of each capsule in order to perform an analysis? A. That is correct.

Q. And do you weigh each capsule individually? A. We do.

121 Q. Do you perform a quantitative analysis as to each capsule? A. We do not.

Q. Well, now, Doctor, you do not know, then, as a matter of fact, what quantity of Heroin was contained in each capsule? A. I do not. I know that each of them contained some Heroin, but how much I couldn't say.

Q. And that some might refer to what you have just described as a trace? A. It could, because that could be identifiable. As I have explained, a trace is something that is clearly identifiable.

* * * * *

122 Q. Doctor, are you in a position to say that the powder that you found in both of those exhibits, which you did describe as Heroin, whether or not it was in fact derived from Opium or from the Opium poppy? A. It is my opinion it was.

Q. And what is the basis for your opinion, sir? A. The basis of my opinion is 35 years experience, and never having seen any synthetic Heroin.

Q. You have never seen any— A. Any synthetic in the sense that it was made from synthetic morphine.

Q. But you are acquainted, Doctor, are you not, that there is such a thing? A. There has been one experiment where it has been produced to my knowledge.

Q. And you are satisfied, Doctor, that it is chemically impossible to tell the difference from Heroin as derived from the opium poppy and Heroin as synthesized in a chemical laboratory? A. That is correct.

* * * * *

123

Officer Joseph A. Gabrys

was recalled to the witness stand and, having been previously sworn, was examined further and testified as follows:

* * * * *

124

Mr. Harris: It appears in this particular instance that this lady was questioned at approximately 6:40, I believe, on 8th Street, Northwest, at which time a statement was obtained which is exculpatory in its nature, and that now it appears to be 11 o'clock that she is interrogated in the Women's Bureau, at which time this incriminatory statement was obtained.

I think that under the Jackson case, again, as well as the Upshur, that we are entitled, as a matter of law, out of the presence of the jury, to examine the witness with respect to the validity of the obtaining of the statement.

The Court: I will deny that at this time, sir.

Mr. Mitchell: Your Honor, there is one other thing that occurs to me, if I may.

The Court: Certainly.

Mr. Mitchell: I believe that once the Government introduces an exculpatory statement, if such is the case—I heard Mr. Harirs say that such was the case—the Government is then bound by that exculpatory statement that they have admitted to the extent that they absolutely disprove it.

* * * * *

126

The Court: I think I will stand on my statement.

* * * * *

Q. All right, officer, relate the conversation you had with the defendant Elaine Lee at the Women's Bureau on the night of April 22, 1952.

* * * * *

130 Mr. Harris: I might point out one thing: there were motions filed on behalf of each defendant for a severance, and that of course is the exact problem or one of the problems.

The Court: That has been passed upon, hasn't it?

Mr. Mitchell: Yes, it has; adverse to us.

Mr. Harris: It was passed upon adversely to us and now we are faced with the problem that should have been cured by a severance.

The Court: Well, I think I will stand on it, gentlemen.

* * * * *

The Court: I will repeat to you again, out of the
131 abundance of caution, that where he makes a statement, that statement is chargeable to A; where B makes a statement, that statement is chargeable to B and not vice versa.

To be more specific, if the defendant Lee makes a statement chargeable to her, it is not against the co-defendant Turner; if Turner makes the statement that is chargeable against him, that is not against Lee.

It is the person speaking against whom it applies, if you believe it to be a fact.

You may proceed, Mr. McLaughlin.

By Mr. McLaughlin:

Q. Go ahead. A. Elaine stated that she had made the sale of narcotic drugs from 4107 8th Street. She stated that she didn't live there, but that she came there quite frequently and that this particular evening she came there earlier, prior to our arrival, and shortly after she arrived the defendant Turner asked her to look after a small bottle that had some capsules which were, she said, left by him on either a chest of drawers or a dresser that was there.

She said she didn't know what was in this bottle; she didn't know what the capsules contained. She had been asked by the defendant Turner to look after these bottles.

She said sometime later the defendant Turner came back to the house and, with him was Nedab, and Nedab asked her for fifteen pieces, and she got those fifteen pieces out of this bottle; and that she got from him \$15.00, which was money that he had paid her.

I asked Elaine if she would give me that statement in a written statement form. She denied to do that, or refused to do that.

* * * * *

Cross Examination

By Mr. Harris:

137 A. There was a young boy there who identified himself as the nephew of the defendant Turner. I don't recall his name. I believe it was Winston or something of that sort.

Q. And did you find any other person there? A. I don't recall.

Q. Now, did you talk to the various people who live there, and did you discover who occupied the three upstairs bedrooms? A. No, I did not.

Q. Did you make any inquiry? A. No, I did not.

Q. You never learned that all of these rooms were rented out? A. No, sir.

Q. Now, there is no doubt in your mind but that 138 there were five bedrooms in the house?

The Court: Five?

The Witness: There is no doubt in my mind that there were four. I don't recall the fifth one.

By Mr. Harris:

Q. And there is a possibility that there were five? Isn't that correct, sir? A. I don't know, sir. I don't recall five. I recall four.

* * * * *

139 Q. Did you hear of a Mr. and Mrs. Chaney living in those premises? A. At that time I had not, no.

Q. When you say "at that time"— A. Yes.

Q. But there came a time when you found that they did live there? A. I learned that they lived there, yes.

Q. And there was, as you said, only one kitchen? A. Yes, sir.

Q. And did you later learn, or did you then find out that everybody used the same kitchen? A. No.

Q. Did you make any inquiry? A. No, sir, I did not.

Q. Now, when you looked in this kitchen sink, there were dirty dishes in the sink? A. Yes, sir.

Q. Did you inquire as to who had last eaten and
140 dirtied up the dishes? A. No, I did not.

* * * * *

Q. Why didn't you inquire along those lines? A. I can give you no reason for that.

Q. No reason suggests itself to you, sir? A. No, sir.

Q. Now, it is your testimony, sir, that you never saw Nedab enter the premises 4107 8th Street, Northwest? A. Oh, that is not my testimony, sir.

Q. Didn't you testify that on the 22nd day of April that you watched Nedab go up 8th Street and he disappeared from your view? A. That is correct.

Q. Now, did you ever see Nedab on the 22nd day of April, 1952, in the company of the defendant Elaine Lee? A. No, I did not.

Q. Now, when Elaine Lee told you at 4107 8th
141 Street that she didn't know anything about any sales of narcotics, and that she didn't know anything about any Major Eugene Nedab, about what time was that? A. It was shortly after my entry into the premises which—

Q. Will you tell us what time that was, sir? A. Approximately 7:20.

Q. About 7:20? A. Yes.

* * * * *

142 Q. And other than your interrogation of the defendant Lee, no other activity was going on at that time? A. Oh, yes. Yes, there was other activity going on. The place was being searched.

* * * * *

Q. At 7:20. A. At 7:20 p. m.?

Q. Yes, sir.

* * * * *

147 Q. Now, you say that this defendant told you that she got fifteen pieces out of a bottle? A. Yes, sir.

148 Q. What bottle was that? A. She said a small bottle; a small, glass bottle. That was her word—rather, those were her words.

Q. Did she show you a bottle? A. She never showed me the bottle, no, sir.

Q. Did you ever ask her where it was? A. No.

* * * * *

149 Q. Well, who, sir, was present at 11:00 or after 11:00 when you talked to her at the Women's Bureau? A. At that time Officer Holcomb, myself, and Mr. Wadden of the District Attorney's Office was present at the Women's Bureau when we talked to her.

Q. And did Mr. Wadden or did you or did Mr. Holcomb or did Mr. Andrew tell this defenant that you were seeking evidence upon which you would make an attempt to convict her? A. I don't understand your question, sir.

Q. Did you tell her that you were seeking evidence to use against her? A. I didn't tell her we were seeking evidence to use against her. She had been told she was under arrest and she was going to be charged with the sale of narcotic drugs.

* * * * *

151 Q. You were present, weren't you, sir, when Major Eugene Nedab was arrested? A. Yes, I was.

Q. Were you the arresting officer? A. Yes, I was one of them.

Q. And you took him into custody? A. That is correct.

152 Q. And you charged him with what? sir? A.
With several sales of narcotic drugs.

Q. And you charged him with some sales to Officer Longo on the 22nd day of April 1952, didn't you, sir? A. Yes.

Q. And as a matter of fact—let me show to you this Government's Exhibit 1-a. You are familiar with this exhibit? A. Yes.

Q. Now, it says here "Charge." Do you read that? A. Yes, sir.

Q. What does it say? A. It says, "Harrison Narcotic Drug Act."

Q. And the defendant? A. Is Eugene Major Nedab.

Q. And now, this is the same evidence that you want to use against this defendant Lee, isn't it? A. Yes, sir.

Q. Didn't Mr. Major Eugene Nedab plead guilty to that particular sale? A. I believe he did.

Q. Now, when you arrested Mr. Major Eugene Nedab, he was known to you at that time, was he not? A. Yes.

* * * * *

153 Q. Didn't you know that he dealt in narcotics?
A. Yes, that he dealt in narcotics; yes.

* * * * *

Q. Did you instruct Officer Longo to go up to the Connecticut Avenue Florist and make a buy off of Nedab? A. I instructed Officer Longo to make buys of narcotic drugs from Nedab, yes.

Q. And he did? A. Yes.

By Mr. Mitchell:

Q. Prior to the occasion, Officer Gabrys, that you went into these premises and arrested the defendants,
154 had you seen him? A. Had I ever seen him prior?

Q. To your knowledge? A. No, sir.

* * * * *

155 The Court: Defendants' Exhibit No. 1 for identification.

(The exhibit referred to was marked Defendants' Exhibit No. 1 for identification.)

Mr. Harris: This is the official Court record entitled; Affidavit for Search Warrant, in a proceeding entitled "United States versus Mrs. Dorothy D. Turner; Commissioner's Docket No. 11, Case No. 5398."

* * * * *

Q. Is that the same affidavit that you attested to, sir? Is that your signature down there?

* * * * *

The Witness: Yes, this is an affidavit that I signed before the United States Commissioner.

* * * * *

Q. Now I am going to ask you, sir, did you swear that James Turner owned the premises at that time?

* * * * *

156 The Witness: No, I did not.

* * * * *

Q. Well, who did you swear owned the premises at that time? A. The application here is made——

Q. Who? The name of the person? A. Mrs. Dorothy D. Turner.

* * * * *

159 Mr. Harris: No, your Honor. Our complaint was that there was no affidavit obtained by us at the time of the raid. At a subsequent time we were able to get, in substance, a purported copy of what the affidavit was.

* * * * *

The Court: Officer, in this document which I now hand you and which was previously handed to you, I notice here on it the statement that the premises were occupied
160 by Dorothy D. Turner.

The Witness: Yes, sir.

The Court: Now, what is your question, Mr. Harris? You didn't make that affidavit, sir?

The Witness: Yes, I signed this affidavit, yes, sir.

* * * * *

Q. And that was the affidavit for a search warrant? A. Yes.

Q. And you only obtained one warrant for these premises? A. That is right.

* * * * *

168 Q. Now, you will notice also that this inventory was made at 6:50 p. m.; is that correct, sir? A. That is what it says on here.

Q. Was that correct? A. No, it is not.

Q. Well, what time was the inventory made, sir? A. I don't know, sir.

Q. But you know it wasn't made at 6:50? A. I know that it wasn't made at 6:50, yes.

* * * * *

169 The Court: Have you any outstanding fact which makes you believe it was other than 6:50?

The Witness: Yes.

The Court: All right.

The Witness: May I state it?

The Court: Yes, certainly. He has asked you.

The Witness: I didn't arrive in premises 4107 8th Street until at about 7:15 or 7:20, so the evidence as contained in Government's Exhibit 2, was not found until after I had arrived there, and it was found then by Agent Andrew.

* * * * *

171

Washington, D. C.,

Wednesday, April 29, 1953.

* * * * *

172

Joseph A. Gabrys.

* * * * *

Cross-examination—resumed.

* * * * *

Q. Mr. Gabrys, do you know, or did you about April 22nd, of 1952, know a gentleman by the name of Jesse Jeffers? A. Yes, I did.

173 Q. Do you know where his home was? A. Yes, I did.

Q. Where was that, sir? A. 4701 8th Street.

Q. Is that near the vicinity of 8th and Taylor? A. Yes, sir, it is.

Q. Did you know that Jesse Jeffers was a major dope peddler?

* * * * *

The Witness: Yes, sir, I did know that.

* * * * *

Q. Directing your attention to the 22nd day of April, 1952, you at no time on that date saw Nedab enter the premises 4107 8th Street, did you, sir? A. No, sir.

Q. I think yesterday you stated that you at sometime found out that a Mr. and Mrs. Chaney lived at 4107 8th Street, is that right? A. That is correct.

Q. Now, the Mr. Chaney you refer to, is that the one and the same with a gentleman named Lloyd Davis, alias Chaney?

* * * * *

174 Mr. Harris: I think I have already developed that Lloyd Davis, or Mr. and Mrs. Chaney—Chaney is one and the same, or one Lloyd Davis is Chaney—who lived at 4107 8th Street, he is convicted of peddling, and he lived there on or about April 22, 1952.

Now, in the peculiar circumstances of this case, where a narcotic was found in a kitchen common to these several roomers or occupants of the premises, I think it is very material to our cause to develop this.

The Court: I haven't heard him say that this was the same so and so. He said that a Mr. and Mrs. Chaney lived there.

Mr. Harris: I represent to your Honor that I know of my personal knowledge that that is the fact, and I am not fishing.

* * * * *

175 The Court: Did you say that you heard from someone that Mr. and Mrs. Chaney had lived at that premises?

The Witness: I had heard that an individual by
176 the name of Chaney had lived in those premises, yes, sir.

* * * * *

Q. And this Chaney that you refer to is the dope peddler that was convicted?

The Court: I think that is immaterial, in view of his statement.

* * * * *

181 Q. Now, on the 22nd day of April, 1952, again directing your attention to that time, I think you testified that you observed Officer Longo and Mr. Nedab about 6:30 or 6:40 p. m.? A. Yes, sir.

Q. Now, you didn't search Nedab yourself, did you? A. No, I did not.

* * * * *

182 The Witness: Yes, sir.

I had searched Nedab at the time I placed him under arrest. I didn't search Nedab at the time I saw him arrive with Officer Longo and leave his car and proceed north on 8th Street.

* * * * *

183 Q. Now, you said you watched him walk, I believe you said, north on 8th Street? A. Yes, sir.

Q. And there came a time that he disappeared from your view? A. That is correct.

Q. And you did not see him for a period of time thereafter? A. That is right.

Q. And therefore, of your personal knowledge you cannot say where he went? A. I can not say, no, sir.

* * * * *
192 Mr. McLaughlin: My question is this:

At the time that Longo was dealing with Nedab, do you know whether or not Nedab knew Longo was a policeman?

The Witness: He didn't.

* * * * *
196 The Court: All right.

Recross-examination.

By Mr. Harris.

* * * * *
197 Q. You do know that Nedab is now serving a five-year sentence for dope peddling, don't you? A. Yes, sir, I do.

* * * * *
205 **Guy W. Holcomb**

was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McLaughlin:

* * * * *
206 Q. You are a member of the Metropolitan Police Department? A. Yes, sir.

Q. Assigned to any particular detail? A. The Narcotic Squad.

Q. Calling your attention to April 22, of 1952, did you have an occasion to see Officer Longo on that date? A. Yes, sir, I did.

Q. Do you recall seeing him between the hours of 12:30 and 6:00 p. m. on that date? A. Yes, sir.

Q. Did there come a time when you and Officer Longo were in Police Headquarters? A. Yes, sir.

Q. Was anything done by you in the presence of Officer Longo at that time on that date of April 22, of 1952? A. Yes, sir.

Q. What was done by you in Officer Longo's presence? A. I recorded the serial numbers of some United States currency. Ten \$1.00 bills, and two \$5.00 bills. I also marked this money with fluorescent powder.

Q. Now, what did you do with that moneys after you took the serial number and put the fluorescent
207 powder on it? A. I gave it to Officer Longo.

Q. And what was the total amount of moneys that you gave to Officer Longo? A. \$20.00.

Q. Now after you gave the money to Officer Longo, where did you go? A. I proceeded to 8th and Upshur Streets, Northwest.

Q. And was there anyone with you at that time? A. Yes, sir.

Q. Who? A. Two United States Marshals, deputy Charles A. Marshall, and deputy Jack Stafford, Officer Brewer and Officer Herring.

* * * * *

Q. When you arrived, what time would you say you arrived at 8th and Upshur Streets, Northwest? A. About
6:30 p. m.

208 Q. And while you were in that vicinity did you see Officer Longo? A. No, sir.

Q. Did you see Officer Longo at any time after you saw him at Police Headquarters? A. No, sir.

Q. Did there come a time on April 22nd when you entered 4107 8th Street, Northwest, in the District of Columbia? A. Yes, sir.

Q. And what time did you enter those premises? A. About 7 p. m.

Q. And prior to entering those premises, were you in the immediate vicinity of those premises? A. Yes, sir.

Q. And while you were in the immediate vicinity of those premises did there come a time when you saw a man by the name of Nedab? A. No, sir, I didn't see Nedab.

Q. What door did you enter the premises? A. Front door.

Q. And at the time that you entered the premises were there any other police officers there? A. Yes, sir.

Q. And what other police officers were there at 209 the time? A. Officer Brewer, Officer Herring and the two United States Marshals.

Q. What door did you enter? A. Front door.

Q. Now when you entered the front door, after you entered the front door of those premises, what did you see, if anything? A. As we were entering the front door, I observed the defendant Turner and another colored man leaving the kitchen and going upstairs, and after we had entered the door I proceeded to the kitchen where I observed the defendant Elaine Lee.

Q. And what was she doing in the kitchen, if anything? A. She was sitting at the table.

Q. What did you do when you went in the kitchen? A. I placed her under arrest.

Q. When you placed her under arrest, then what did you do? A. I took her to the front bedroom, located on the first floor.

Q. What did you do after you took her to the front bedroom located on the first floor? A. I asked her 210 if she had any money. She said that she did, and she reached into her bosom and took out about \$23.00 in United States currency.

* * * * *

Mr. Harris: Your Honor, taking from this witness—it is an illegal thing to compel the witness to exhibit her hands. I think the testimony will reveal that this witness' hands at sometime were placed under a fluorescent light.

Is that correct, Mr. McLaughlin?

Well, before the damage is done, I would like to object because, after the question is asked——

* * * * *

214 Mr. McLaughlin: I will have this marked as Government's Exhibit for identification number 3.

(The exhibit referred to was marked Government's Exhibit No. 3 for identification.)

Mr. McLaughlin: Mark an envelope to contain this as Government's 3-a.

(The envelope referred to was marked Government's Exhibit No. 3-a for identification.)

By Mr. McLaughlin:

Q. Officer, I show you Government's Exhibit marked for identification as number 3, and ask you whether or not you can identify that? A. Yes, sir, I can.

Q. And you identify Government's Exhibit 3 as
215 what? A. This is the list that I made up in the company of Officer Longo.

Q. A list you made up of what? A. The serial numbers of the bills.

Q. Of what bills? A. The money that I gave Officer Longo.

Q. And when was that? A. About 5:30 p. m., April 22nd.

* * * * *

Q. You say it was prior to going to 4107 8th Street, Northwest, on April 22nd; is that right? A. Yes, sir.

* * * * *

216 Q. When you went in those premises, you say you placed the Lee girl under arrest, and that they turned certain moneys over to you; is that right? A. Yes, sir.

* * * * *

220 Q. After this money was recovered from the defendant Lee, did you make any check with it as to the serial numbers that you had on that paper? A. Yes, sir.

Q. And were any of the moneys recovered from the defendant, the serial numbers on that money correspond with the serial numbers on that paper? A. Yes, sir.

Q. And those were the serial numbers of the bills or the same bills that you had previously given Longo; is that right? A. Yes, sir.

Q. Now, did you have any conversation with the defendant Lee as to the money? A. Not at that time.

Q. Now, also at the time that you recovered the moneys from the defendant Lee in the house on April 22nd, did you do anything else with reference to the moneys? A. Yes, sir.

Q. What else did you do? A. We had a fluorescent light, ultraviolet light, that we put on the money and it showed that the money did have or was marked with fluorescent powder.

221 Q. Showing you Government's Exhibit 2 and 2-a, I will ask you whether or not you had that in your possession at any time? A. Yes, sir, I did.

Q. And who did you receive Government's Exhibit 2 and 2-a from? A. I received Government's Exhibit 2-a from Sergeant Gabrys in the Office of the Narcotics Squad.

Q. And what did you do with Government's Exhibit 2-a, or 2 and 2-a? A. I first received Government's Exhibit No. 2 from Agent Andrew at the house, or, I didn't receive it from him, Agent Andrew had it in his possession with the ultraviolet on Exhibit No. 2.

Q. You put that at the house? A. Yes, sir.

Q. And did it show anything? A. Yes, sir. It was also marked with ultraviolet—I mean, counter glow powder.

The Court: Was that Exhibit 2 you are speaking of now?

The Witness: Yes, sir.

The Court: I understand now—or did I understand you correctly to say that you didn't receive it from him, but Andrew had it; is that what you said?

The Witness: In his possession, yes, sir.

222 The Court: All right.

By Mr. McLaughlin:

Q. Did there come a time when you did receive Government's Exhibit 2 and 2-a? A. Yes, sir. I received that also from Sergeant Gabrys.

Q. And what did you do with Government's 2 and 2-a after you received it? A. After I had initialed it and dated it, I placed it into this larger envelope which I sealed and placed into the office safe.

* * * * *

Q. After you placed it into the office safe did there come a time when you turned it over to anyone else? A. Yes, sir. On April 25th, I turned it over to the United States Chemist.

Q. Mr. Young? A. Yes, sir.

* * * * *

223 Q. Did there come a time when you, in Officer Gabrys' presence, talked to the defendant Elaine Lee on the night of April 22nd of 1952? A. Yes, sir.

Q. And when and where was that? A. That was at the Women's Bureau, after we had completed our investigation at the house and we had taken the defendant to the Women's Bureau.

Q. Now, what conversation did you have or did Officer Gabrys have in your presence, with Elaine Lee, at that time? A. Sergeant Gabrys questioned her or asked her about the sale of narcotics that had been made out of the house, and the narcotics that were found in the house, and the defendant Elaine Lee stated that she didn't live at the house but that she did come there frequently, and that when she came there that day on this occasion the

defendant Turner had told her that he was going out and that there was a bottle of stuff on the dresser in the bedroom, and for her to take care of it.

And then he left, and then she stated that she had sold—she didn't know what was in the bottle, but she had sold to a man by the name of Nedab fifteen capsules when he came in and asked for fifteen—when he came in he
224 was accompanied by the defendant Turner.

Q. Did you have any conversation, or did Gabrys have any conversation at that time with reference to the moneys that were found on her by you? A. Yes, sir.

Q. All right, and what was said about that? A. She stated that she had received the money from Nedab in payment for the fifteen capsules.

* * * * *

225 The Court:

* * * * *

A prohibition of compelling a man in the criminal court to be a witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him; not an exclusion of his body as evidence, when it may be material.

* * * * *

228 Mr. Harris: Do I understand that your Honor has ruled on the question?

The Court: I am going to rule on it. I wanted to see if you had anything additional.

* * * * *

230 Q. Officer, I was questioning you in regard to Government's Exhibit 2, and I believe you said you found fluorescent powder on that? A. Yes, sir.

Q. Did you have any conversation with the defendant Elaine Lee with reference to the fluorescent powder found on Government's Exhibit 2? A. No, sir.

Q. After you recovered the moneys, Government's Exhibit 3-a, from the defendant Elaine Lee, what else did you do in reference to her? A. She was kept there amongst the other people that were in the house.

Q. Now, did you make any examination of her while in the house? A. I don't remember, but I believe that a woman from the Women's Bureau did come up there and search her.

Q. Well, I meant, did you personally make an examination of her in reference to the fluorescent powder? A. Yes, sir.

* * * * *

231 Q. And what examination did you make of the defendant Elaine Lee as to the fluorescent powder that you had previously put on the marked bills? A. We examined the defendant Lee's hands with the ultraviolet light.

Q. Did you find any fluorescent powder on her hands? A. Yes, sir.

Q. After you found the fluorescent powder on the hands of the defendant Lee, did you talk to her at all about that?

A. No, sir.

232 Q. Did she say anything? A. No, sir, not at that time.

Q. I meant later at the Women's Bureau did she say anything in reference to the fluorescent powder found on her hands? A. Yes, sir. Well, only that the money that she had received from Nedab, when we told her it was money marked with fluorescent powder, she said she had received it from Nedab.

* * * * *

Q. Did you say anything at the Women's Bureau about the fluorescent powder found on Government's Exhibit 2? A. Yes, sir.

Q. What did she say in reference to that? A. She stated that that was a bottle that she had sold the narcotics from.

* * * * *

233

Cross-examination.

By Mr. Harris:

Q. Now, you say that you entered the premises 4107 8th Street, about 7 o'clock? A. Yes, sir.

Q. And at that time Officers Herring, Brewer, deputy marshals Stafford and Marshall were already in the house? A. No, sir. I entered the house with them.

* * * * *

Q. Now, when you entered at 7 o'clock were there other officers already present in the house? A. No, sir.

Q. Were you the first one to enter, sir? A. Yes, sir.

Q. Did you have in your possession a search warrant? A. No, sir.

* * * * *

Q. And you are certain that you entered at 7 o'clock and not before? A. About 7 p. m.

* * * * *

234 Q. Could it have been after 7 o'clock? A. It could have been.

* * * * *

237 Q. Well, where did you first see her? A. Seated in the kitchen.

Q. Seated in the kitchen? A. Yes.

Q. And you immediately placed her under arrest? A. Yes, sir.

Q. Now, at that time where was Mr. Nedab?

* * * * *

238 The Witness: I don't know.

* * * * *

By Mr. Harris:

Q. Therefore, as far as you know, you could not say whether or not Nedab ever entered 4107 8th Street; is that so? A. I can't say whether he entered it on that day.

Q. That is all we are concerned with, is the 22nd day of April, 1952. A. Yes, sir.

Q. Now, you say you had no conversation with the defendant Turner at the house there? A. I may have had conversation with him but it wasn't in regards to it.

Q. Did't you make an examination also of his hands?

A. Yes, sir.

239 Q. And what did that examination reveal? A.

That he didn't—his hands didn't have the counter-glow powder on them.

* * * * *

241 Q. Do you know, or did you on April 22nd know a gentleman named Jesse Jeffers? A. Yes, sir.

Q. Did you know where he lived? A. Yes, sir.

Q. Where was that, sir? A. 4101 8th.

Q. 4101? A. Yes, sir.

Q. Now, with reference to 4107, how far away is that house? A. Four houses.

242 Q. There is no doubt in your mind but that Jesse Jeffers was a major dope peddler?

* * * * *

The Witness: I had information that he was.

* * * * *

243 Mr. Harris:

* * * * *

244 I might say to your Honor, my purpose in this line of interrogation, is this: here was a man, a major dope wholesaler, who lived at 4101 8th Street—

The Court: It doesn't do you any good to testify to me about it, because I don't know anything about him. You have got in the record already, Mr. Harris, that he was convicted, through some officer. I think it was Officer Gabrys who testified to it, and it was shown that he was living in 4101 or some four houses away.

* * * * *

248 Q. Did you know who occupied those two rooms or did you find out who occupied them? A. No, sir, I didn't.

Q. You never made any inquiry? A. No, sir.

Q. Did you search those two rooms? A. Yes, sir.

Q. And you found nothing prohibitive in either of those two bedrooms? A. No, sir.

* * * * *

249 Q. Did there come a time when Officer Gabrys entered the house? A. Yes, sir.

Q. Do you know what time that was? A. It was shortly after we had entered the house.

Q. Now, when you say "shortly", approximately how long in terms of minutes would you mean? A. Five to ten minutes.

* * * * *

250 Q. Did you ever find out how it happened that this bottle was in a sink full of dirty dishes? A. No, sir.

* * * * *

Q. Did you ever find out how many kitchens were in this house? A. There was only one on the first floor.

Q. And it never came to your attention that that was the only kitchen in the building? A. As I said, I never went to the second floor.

251 Q. Did it ever come to your attention that a gentleman named Lloyd Davis lived there, alias Chaney, I believe, at 4107 8th Street? A. I had information that he was living there.

Q. And does your information also reveal that he was a dope peddler?

* * * * *

The Witness: Yes, sir.

* * * * *

Q. Now, what time did you leave Headquarters? A. About ten minutes after six.

Q. And who was in your company or whose company were you in? A. Deputy U. S. Marshal Charles A. Marshall; Deputy U. S. Marshal Jack Stafford; Officer Brewer and Officer Herring.

* * * * *

253 Q. Now, when you came up to the door, did you ring the bell? A. No, sir.

Q. What did you do? A. Forced the door open.

Q. Didn't knock? A. The door had been knocked on previously.

Q. Pardon? A. The door had been knocked on before I got there.

Q. Who knocked on the door? A. Deputy Marshal Stafford.

Q. Didn't you say you were the first gentleman to arrive? A. No, sir.

Q. Where were you while the door-knocking was taking place? A. Standing about ten feet back on the sidewalk from the house.

Q. Were you still walking? A. No, sir. I was waiting?

Q. You were waiting? A. Standing still.

254 Q. How many times did he knock, if you know? A. Just once.

Q. He knocked once? A. Yes, sir.

Q. Did you have with you an axe? A. No, sir.

Q. What did you use to break the door down? A. Kicked it open.

Q. With your shoe? A. Yes, sir.

Q. At that time was Officer Tennyson kicking in the back door? A. No, sir.

Q. Do you know whether or not Officer Tennyson knocked on the back door?

* * * * *

The Witness: He didn't knock on it when I saw him come through it.

* * * * *

255 Q. Did Officer Tennyson break the back door down? A. No, sir.

Q. Did anyone break the back door, or force it? A. No, sir.

Q. Which door was opened first, the front door or the rear door? A. Front door.

Q. Were you actually in the premises at the time that Officer Tennyson came in? A. Yes, sir.

Q. How long was it before Tennyson got into the place after you had come into the front door? A. When I got to the kitchen, they were on the back porch.

Q. And they hadn't gotten in yet? A. No, sir. They were forcing the rear screen door.

* * * * *

256 Q. Now, you testified that you saw Officer Tennyson and somebody forcing the rear screen door, didn't you? A. Yes, sir.

Q. Did you call out to them that you were already in when you saw them breaking this rear door? A. No, sir. When I got into the kitchen, they were breaking the screen door.

Q. And you let them continue? You didn't give them any signal or anything? A. The screen door was broken when I went up to the door.

Q. How many officers came into the rear door? A. I don't remember, other than Officer Tennyson and Officer Wurms. There were other officers, but I don't recall who they were.

257 Q. Do you know the approximate number? A. Four, I think.

Q. And four came into the front door? A. Five.

* * * * *

Q. Now, when you made the first knock, or Marshal Stafford knocked the one time on the front door, how much time elapsed between that one knock and the time that you

actually gained entrance into the premises? A. Not very long. About twenty seconds.

Q. About twenty seconds, you say? A. I mean, from the time he first knocked, is that what you mean?

Q. Yes, sir. A. About half a minute, I would say.

Q. And you went immediately to the kitchen? A. Yes, sir.

Q. And within a matter of how long, or how long was it before Tennyson got physically into the place? A. You mean from the time that Stafford first knocked?

Q. From the time that you got into the kitchen. A. They were coming up on the back porch or were on the back porch when I got into the kitchen.

Q. Now, while these things were transpiring, the
258 defendant Lee was seated at the kitchen table? A.
Yes, sir.

Q. Pardon? A. Yes, sir.

* * * * *

Q. How long was it after you got into the kitchen that you saw the defendant Turner? A. After they brought him down from upstairs, I imagine it was a couple of minutes.

* * * * *

261 Q. Did you ever see the defendant Turner with
Major Eugene Nedab? A. No, sir.

* * * * *

Redirect examination.

By Mr. McLaughlin:

Q. You say when you went in the premises the first time, that is, when you went in—where did you see Turner? A. After the door had been forced open, I saw him going up the steps.

Q. And at that time where was the Lee girl? A. In the kitchen.

Q. In the kitchen? A. Yes, sir.

Q. You say, I believe in response to a question by Mr. Harris, that you could see through the door? A. Yes, sir.

Q. And when you looked through the door what would you see? What rooms could you see into, if any? A. You would see into the hallway coming from the 262 kitchen.

Q. And when you looked through, before entering the door, did you see anyone in there as you looked through the door? A. Yes, sir.

Q. Who did you see? A. I saw the defendant Turner and the other colored man coming from the kitchen.

* * * * *

Thomas W. Andrew

was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McLaughlin:

* * * * *

Q. And where are you employed? A. I am the Agent in Charge of the Washington Field Office, Bureau of Narcotics, Treasury Department.

263 Q. Recalling your attention to April 22 of last year, 1952, were you with Officer Gabrys on that evening? A. I was.

Q. Did there come a time when you saw a man identified to you as Mr. Nedab? A. Yes, sir.

Q. And were you present when Mr. Nedab was arrested? A. I was.

Q. After Mr. Nedab was arrested did there come a time when you entered the premises 4107 8th Street? A. Yes, sir.

* * * * *

264 Q. What did you do when you went into the place?

A. I went in the front bedroom of the house.

Q. When you went in the front bedroom who did you see in there? A. I saw Detective Holcomb, the defendant Turner, and the defendant Lee.

Q. Now, after you entered those premises did you make any search of the premises? A. I did.

Q. And what search did you make? A. I made a search in the kitchen.

Q. Now I will show you Government's Exhibit No. 2 and ask you whether or not you can identify that? A. I can.

* * * * *

265 Q. I say, how do you identify Government's Exhibit 2, Mr. Andrew? A. It has my initials and the date, April 22, 1952, and the time.

Q. Did you put them on there? A. I did.

Q. Was Government's Exhibit 2 for identification found by you in the premises? A. It was.

Q. Whereabouts in the premises 4107—8th Street, Northwest, in the District of Columbia, was that found by you? A. It was found in the kitchen sink.

Q. In those premises? A. In those premises.

Q. And was it in practically the same condition today as it was then? A. With the exception of the initials
266 and the tag, it was in practically the same condition, the contents were about the same.

Q. By contents, by that you mean the capsules? A. It contained capsules of white powder.

Q. I will show you Government's Exhibit marked for identification 2 and ask you—as 2-a, that is, and ask you whether or not you can identify that? A. I can.

Q. And you identify Government's Exhibit 2-a as what? A. It is a Sal Hepatica bottle bearing my initials and the date April 22, 1952, and the time.

Q. Were they put on there by you? A. They were.

Q. Was that Government's Exhibit 2-a recovered by you in those premises 4107 8th Street, Northwest, in the District of Columbia? A. It was.

Q. Whereabouts in those premises was it recovered by you? A. It was found on the shelf of the kitchen cabinet just over the sink, in the kitchen.

Q. And that kitchen you refer to was that the same kitchen where you found Government's Exhibit 2? A. It was.

267 Q. Did there come a time while you were in those premises when you had an occasion to talk to the defendant James Turner? A. I did.

Q. And when and where was that?

* * * * *

The Witness: That was in the bedroom of the first floor at the premises 4107 8th Street, Northwest.

By Mr. McLaughlin:

Q. And when, after you had arrived there? A. Some few minutes after I had arrived I had occasion to talk to the defendant.

Q. Was that before you found Government's Exhibit 2 in the sink or afterwards? A. Afterwards.

Q. Did you have any conversation with the defendant in reference to Government's Exhibit 2 found by
268 you in the sink? A. I did.

Q. And what conversation did you—

Mr. Mitchell: Objection.

* * * * *

Mr. Mitchell: I object to any conversation had with this defendant; that is, the disclosure of any conversation had with this defendant, on the grounds that the defendant was illegally arrested, if your Honor please.

The Court: That is a matter which has been the subject of a previous motion.

Mr. Mitchell: Yes, that is right.

The Court: I just want to understand what you are saying.

Mr. Mitchell: Yes, sir.

The Court: All right.

* * * * *

269 By Mr. McLaughlin:

Q. Officer, what conversation did you have with the defendant James Turner with reference to Government's Exhibit 2, if any? A. I showed him that exhibit and asked him if he had ever seen it before and he denied that he had ever seen it.

Q. Did you have any conversation with the defendant James Turner in regards to Government's Exhibit 2-a, the empty bottle? A. I did.

Q. And what conversation did you have with the defendant in reference to Government's Exhibit 2-a? A. After I had shown him——

Mr. Mitchell: Objection.

The Court: What was the conversation, Mr. Andrew?

The Witness: I showed him that Exhibit 2 and asked him if he had ever seen that before, and he stated that he had.

By Mr. McLaughlin:

Q. Did he say where he had seen it? A. I don't recall him saying anything about where he had seen it, but he stated he had seen it before.

Q. Did he say under what conditions that he saw it?

* * * * *

The Witness: I don't recall.

* * * * *

271 Q. After you showed him the bottle, Government's Exhibit 2-a, did you have any further conversation? A. I did.

Q. All right, and then what? What was it? A. I asked him how he made his living, and he stated that he had not worked for four years——

Mr. Mitchell: This is objected to, your Honor, on grounds of relevancy.

The Court: I will permit that, sir.

The Witness (continuing). —and I said to him, I said: “Is that your Cadillac Sedan out in front?” He said “Yes.”

I said, “Well, where did you get the money to buy that?”

Mr. Mitchell: Your Honor, what is the relevancy of this?

The Court: I will permit it, Mr. Mitchell.

272 The Witness: He said, “My girl bought it for me.” I said, “Well, where is your girl?” He said, “She is in New York at the present time.”

* * * * *

283 (Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. Harris: It is my understanding that your Honor was going to act on the motions for dismissal of all those other counts after the jury was sworn. I don't know whether the record is clear on that or not.

The Court: I will act on them, yes.

Mr. Harris: May I make it as a formal motion?

The Court: I think the government was the one who was going to dismiss as to those.

Mr. McLaughlin: That is true, your Honor.

The Court: And it is this way, I think, that if the Government desires to move, I should give him the opportunity, because he is the one who suggested that they be dismissed.

284 Now, which ones do you desire to dismiss, Mr. McLaughlin? I think I can help you by elimination.

Mr. McLaughlin: Yes.

Mr. Harris: I think we are only concerned with 12, 13, 16 and 17.

The Court: That is my recollection.

Mr. McLaughlin: As I recall, we are going on the 12th, and the 13th, the 16th and the 17th.

The Court: That is what you said before, sir.

Mr. McLaughlin: Yes.

The Court: Now, do I understand the Government is moving to dismiss the remaining counts?

Mr. McLaughlin: Yes, your Honor.

The Court: Which means 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11?

Mr. McLaughlin: And 14—

The Court: And 14 and 15?

Mr. Mitchell: Yes, sir.

Mr. Harris: Yes.

The Court: And you so move, and I assume, of course, the defense has no objection. So the motion is granted.

* * * * *

304 (Counsel returned to the trial table.)

The Court: You may proceed, Mr. McLaughlin.

Mr. McLaughlin: There is a question I think I overlooked:

* * * * *

Q. In regards to Government's Exhibit 2 which I showed you, recovered from the premises, did it have any
305 Government stamps of any kind on it? A. It did not.

Q. On the capsules inside? A. No, sir.

Q. Did this Government's 2-a have any stamps of any kind? A. It did not.

* * * * *

308 Q. What time did you get in premises 4107; did you say, Agent? A. I got in the house I think shortly—it was after 7 o'clock.

Q. And who came with you? A. I went in by myself.

Q. Was everybody there, all of the other police officers and deputy marshals, were they already in at the time you arrived? A. I left Sergeant Gabrys on the corner of 7th and Taylor Streets, Northwest, and he was still—when I first entered the house, I had left him there.

* * * * *

310 Q. No, I am asking you what you did with reference to the bottle— A. I retained that in my possession.

* * * * *

311 Q. Did you ever turn it over to marshal Stafford?
A. No, sir.

Q. Who did you ever turn it over to? A. I turned it over to Sergeant Gabrys.

* * * * *

315 Q. Now, you did ask him if he knew anything about what you had at that time, a suspected narcotic, did you not? A. I did.

Q. What did he say with respect to that? A. Regarding the bottle containing the capsules, he stated he had never seen that before.

* * * * *

316 Q. And, as a matter of fact, you didn't ask him whether he had seen this bottle when it was full or empty or what was in it or whether Sal Hepatica had been in it or not, did you? A. I just asked him if he had ever seen that bottle before.

* * * * *

317 Q. Now, you searched him, didn't you? A. I did.
Q. Did you find any narcotics on him? A. I did not.

* * * * *

Q. Did you see the defendant Turner enter the house?
A. I did not.

318 Q. Did you see the defendant Turner before he entered the house? A. I did not.

Q. At the time you arrested him and during the course of your interrogation, did you ask him how long he had been there? A. I did not.

* * * * *
Q. And did you check his money? A. I believe it was checked, yes.

Q. And you didn't find on his person any of the money which you were seeking? A. No, we did not.

319 Q. Now, there came a time, did there not, when you inquired of the defendant Turner as to the name and identity of the persons living in that house? A. I made no such inquiry personally.

Q. I mean in your group, I mean, either you or some of the officers? A. I think it was done in there, yes.

Q. And he at that time indicated to you the persons that lived there? A. I think he gave such information.

* * * * *
321 Q. Mr. Andrew, I believe the question was: did it come to your attention that the defendant Turner was asked the question of where he lived?

* * * * *
322 Q. Can you answer whether it was the same address as the place which you had entered? A. I don't believe that it was.

* * * * *
326 **Sherwood H. Herring**

was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McLaughlin:

* * * * *

327 Q. You are a member of the Metropolitan Police Department? A. Yes, sir.

Q. And assigned to any particular detail? A. Assigned to the Narcotics Squad.

Q. Were you so assigned on April 22nd of 1952? A. Yes, sir.

Q. Now, recalling your attention to that day of April 22nd of 1952, did you have an occasion to be in the vicinity of 7th and Taylor Streets, we will say? A. Yes, sir.

Q. How did you get in that vicinity? A. I went from the office of the Narcotics Squad to Georgia Avenue and Taylor, with Officer Holcomb, in the cruiser, and Officer Brewer, also, was with us.

Q. And what time would you say that was? A. I arrived up at Georgia Avenue and Taylor Street at approximately 6:30 or shortly afterward.

Q. At Georgia Avenue and Taylor Street did you remain with Officer Holcomb? A. No. They let me out in front of the Safeway Store there, and they went to 8th and Upshur Streets, and I went down to the corner of 8th and Taylor Streets, Northwest.

Q. At that time did you know where the residence
328 4107 8th Street, Northwest, was? A. I did.

Q. And from where you were did you have those premises under observation? A. I did.

Q. Prior to going to that location on April 22nd, did you know a man by the name of Mr. Nedab? A. I did.

Q. You knew him when you saw him? A. Yes, sir.

Q. Coming back to April 22nd of 1952, while you were in the location that you have just stated, did you see Mr. Nedab? A. I did.

Q. When did Mr. Nedab, and where did he first come under your observation while you were in that location on April 22nd of 1952? A. It was about 6:45 p. m., Nedab was in Officer Longo's car and they came from Georgia Avenue and Taylor, over Taylor Street to 8th and Taylor, went across 8th and parked on the southeast corner of 8th and Taylor Streets, Northwest.

Q. Did anything happen when they parked there? A. After they parked, Nedab got out of the car, crossed Taylor Street and walked up on the east side of 8th to 4107 8th Street, Northwest.

* * * * *

329 Q. What if anything happened when he arrived in front of those premises 4107? A. He arrived at the premises and a short while before they came, Turner had come out of the house and had a broom in his hand, and he had swept the steps and the front walk out to the sidewalk, and he was in the process of doing this when Nedab came up there.

Nedab approached him and had a short conversation and they both went in the house.

Q. When Nedab went in the house, did you change your position or location? A. No, I stayed on the corner where I was.

Q. After Nedab went in the house did there come a time when you saw Nedab again? A. I did.

Q. And when and where did you see him? A. He came out of 4107 8th Street, crossed Taylor, got into Officer Longo's car.

Q. How long would you say that Mr. Nedab remained in those premises 4107 8th Street, Northwest? A. Oh, five to seven or eight minutes.

Q. Did you enter those premises 4107 8th Street, 330 Northwest? A. I did.

Q. And who did you enter those premises with, if anyone? A. Officer Holcomb, Officer Brewer, and two deputy marshals—Stafford and Marshall.

Q. And what door did you enter? A. Entered the front door.

Q. When you entered the front door what did you observe, if anything? A. While we were in the process of breaking the front door open so we could get in—nobody would answer the door—I saw brother Turner and Elaine Lee come out of the front room and run back towards the

kitchen, and by the time we got the door open Turner had come back from the kitchen and started up the stairs, and Miss Lee stayed in the kitchen and was arrested there in the kitchen by Officer Holcomb.

* * * * *

331 Cross-examination.

By Mr. Mitchell:

* * * * *

341 Q. Do you know Jesse Jeffers? A. Yes, I do.

Q. And did you know him at that time? A. Not personally. I knew him by sight.

Q. Now, you knew Jesse Jeffers lived there, didn't you, in that vicinity? A. Yes, I did.

Q. And you also knew, as a matter of fact, that Jesse Jeffers was a dope peddler, did you not? A. Yes.

* * * * *

346 Q. So, as a matter of fact, you don't know whether there was any conversation at all or not, do you?
A. No, actually.

Q. You never heard anything said? A. No, sir.

* * * * *

351 Q. Did you ever see Nedab in the company of the defendant Lee? A. No, sir.

* * * * *

Q. Where were you, sir, at 7:20? A. I was searching the house.

* * * * *

Q. And did you find out who occupied the various rooms?
A. No, I never did.

Q. Did you ever make any inquiry? A. No, I didn't.

* * * * *

352 Q. Did you observe any persons on the premises other than the two defendants and policemen?

* * * * *

The Witness: Yes; I saw another fellow there.

* * * * *

Q. What was the name of that fellow? A. I believe it was Winston. I am not positive.

Q. Did you know what room he occupied? A. I think he occupied the small room on the second floor in the front.

* * * * *

Q. Now, you say that you knew Eugene Nedab, or Eugene Major Nedab, did you? A. Knew him by sight, yes, sir.

Q. And you knew him to be a narcotic peddler, 353 didn't you? A. Yes, sir.

* * * * *

354 Mr. Mitchell: I at this time do make a request of your Honor for leave to examine any statement that has been submitted or made by this officer for the benefit of cross-examination.

Now, the reason for that is, your Honor, that from the information that I have, this officer has made a mistake as to the day—this is my position, your Honor, from the information that I have—he has made a mistake as to the day he saw the defendant sweeping the sidewalk. So I am now asking your Honor, under what I think is the theory of the Copeland case, to allow me to examine these notes for the purpose and benefit of cross-examination.

The Court: I will deny it,

* * * * *

355 Mr. Harris: officer has some notes from which he has refreshed his memory——

The Court: He hasn't said so.

Mr. Harris: Might I call him back for that purpose?

The Court: No, sir, we are not going to call him back now.

Mr. Harris: Because I saw him right here in the courtroom.

The Court: He may have been looking at something pertaining to weather. No, sir, I won't call him back now for that purpose.

* * * * *

356

Seymour Raboy

was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McLaughlin:

* * * * *

Q. You are a member of the Metropolitan Police Department, are you? A. I am, sir.

Q. And assigned to any particular detail? A. Narcotics Squad.

357 Q. Officer, calling your attention to April 22 of last year, 1952, did you have occasion to go to 4107 8th Street, Northwest, in the District of Columbia? A. I did, sir.

Q. And what time would you say you arrived at those premises? A. You mean in those premises?

Q. No, at them, in that vicinity, we will say. A. About 6:30 p. m.

Q. And did there come a time when you did enter those premises 4107 8th Street, Northwest, in the District of Columbia? A. I did, sir.

Q. And how did you enter the premises? A. Through the rear of the premises.

Q. And were you alone at the time? A. No, I was with three other officers.

Q. And what were the other officers' names? A. There was Officer Wurms, Officer Tennyson, and Agent Fullmer of the Federal Bureau of Narcotics.

* * * * *

358 A. Yes, sir, he has.

Q. Tell us, if you will, what you observed, if anything, as you approached the rear door of premises 4107 8th Street, Northwest? A. As we entered the back yard, officer Wurms and Officer Tennyson went around the garage that was there in the center, around one side of it; and Agent Fullmer and I went around the other side, and as we went inside the yard I observed the defendant Turner coming out of the door.

Q. Out of what door? A. Out of the rear door of 4107 8th Street, with the defendant Lee behind him. When they noticed—when they saw us——

Mr. Mitchell: Objection; conclusion.

The Court: You don't know whether they saw you or not, but what did they do, if anything, sir?

The Witness: They ran back inside of the house and slammed the door, and I had to break open the screen door to try to gain admittance, and then the door was later opened by Officer Herring.

By Mr. McLaughlin:

Q. And then when you entered, did you see either one or both of the defendants in the premises? A. I saw both the defendants in the premises.

Q. At the time you saw the defendants, as you say, 359 coming out the back door, did you hear or did they say anything? A. I heard someone say "here they come."

Mr. Mitchell: Objection.

By Mr. McLaughlin:

Q. Would you say——

Mr. Mitchell: Objection:

* * * * *

Mr. McLaughlin: I think I can connect it up, your Honor.

The Court: All right. Suppose you strike that and proceed over.

When you were coming did you hear any sound, sir?

The Witness: Yes, sir.

The Court: And where did the sounds come from?

The Witness: It sounded like it was coming from where the defendants were.

The Court: Are you able to say—did you see any
360 other persons at that time? A. I only saw those two, sir.

The Court: And how far distant were they from you at that time?

The Witness: About 15 to 20 feet.

The Court: Do you object to that?

Mr. Mitchell: Yes, sir:

The Court: Still object?

Mr. Mitchell: Yes, sir.

The Court: Can you attribute this sound to any one or other of these defendants?

The Witness: It was a male voice.

The Court: Were two persons there?

The Witness: Yes, sir.

The Court: I think I will permit him to answer it.

What did you hear, sir?

The Witness: I heard this male voice say, "here they come."

By Mr. McLaughlin:

Q. And when you heard that, what did the defendants do, if anything? A. They ran back inside of the house.

* * * * *

361 Cross-examination.

By Mr. Mitchell:

* * * * *

364 Q. At the time you say you saw these people coming out the back door and they then turned and fled, was that a rapid movement on their part? Was it a hurried sort of thing? A. Yes, sir, it was a fairly rapid movement.

Q. At that time did you say anything to anyone? A. I didn't say anything to anyone.

Q. Did you say "halt" or "I am a police officer"
365 or anything at that time? A. No, sir.

Q. Gave no indication as to your identity?
A. No, sir.

Q. Did anyone in your group, in your presence, give any indication of their identity? A. No, sir.

* * * * *

Q. Now, when you arrived in the premises, was there anyone there—besides, of course, the police officers and those who were associated with the police officers—other than the defendant and the co-defendant, Elaine Lee?
A. There was another man there.

Q. Did you know him? A. No, I don't know him.

* * * * *

Q. When you arrived at the back door had Officer Holcomb and his group broken through the front entrance?
A. Yes, I was admitted by Officer Herring.

* * * * *

366 Q. Now, from your position and where you were, and at the time you were attempting to get through the screen door, could you hear what was going on inside or what was going on at the front door? A. All I heard was a noise. That's all.

Q. And you heard that noise prior to the time that you gained entry through the screen door? A. Yes, sir.

Q. Could you describe that noise? Was it a
367 crashing sound or any sound that you could identify with the breaking of a door? A. It was a crashing sound.

Q. About how long was it, sir, prior to the time that you got through the screen door, that you had heard that crashing sound? A. Will you repeat that question, please, Mr. Mitchell?

Q. About how long would you say it was prior to the time that you gained entry through the screen door, that you had heard this crashing sound at the front door?

A. I heard the crashing sound at the front door before I had even attempted to gain entrance to the screen door.

* * * * *

368

Ivan Wurms

was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. McLaughlin:

* * * * *

Q. And you are a member of the Metropolitan Police Department? A. I am, sir.

Q. And during the month of April of 1952 were you assigned to any particular detail? A. I was, sir.

Q. And what was that? A. I was assigned to the District Attorney's Office.

Q. On that date of April 22nd of 1952, did there come a time when you went to premises 4107 8th Street, Northwest in the District of Columbia? A. I did, sir.

Q. And what time did you arrive at those premises? A. At 7 p. m. in the evening, sir.

Q. And who did you go to there—with whom did
369 you go to those premises? A. Agent Fullmer, Seymour Raboy, Irvin Tennyson, and myself, sir.

* * * * *

Q. When you arrived at those premises, did there come a time when you entered those premises 4107 8th Street, Northwest? A. Yes, sir.

Q. And how did you enter those premises? What door? Let's put it that way. A. The rear door on the back, near the kitchen, sir.

* * * * *

370 Q. As you came in the rear way, what did you see, if anything, in reference to the house? A. I saw the defendant, Mr. Turner, and Miss Lee, trying to get out the back.

Mr. Mitchell: Objection. Conclusion.

By Mr. McLaughlin:

Q. What did you see them actually do; what did they do? A. Trying to open the rear door, sir.

Mr. Mitchell: Objection. Conclusion.

The Court: All right, sir.

Did you see their movements, and what were their movements?

The Witness: They were opening the rear door, sir.

The Court: All right.

By Mr. McLaughlin:

371 Q. Did you hear either one or both of them say anything? A. I did not.

* * * * *

Q. How much distance in feet would you say you were away from the defendant and the co-defendant, Elaine Lee, at the time that you say you saw them at the door? A. I would say approximately 25 or 30 feet.

* * * * *

Q. And do you have a normal rate of hearing, sir; your hearing, is it good? A. Yes, sir.

* * * * *

373 Q. Nor did you hear anyone in your group identify themselves as police officers? A. No, sir, I didn't.

* * * * *

389 The Court: All right.

Now let me ask you this, gentlemen: you apparently have prepared some prayers. If you have got them, let me have them in the morning, will you?

* * * * *

Mr. Harris: * * * I have them with me now.

The Court: Sure, give them to me.

* * * * *

390 The Court: There isn't any need of Mr. Frye taking any more of this, is there?

Mr. Mitchell: No. Let him go home.

* * * * *

391 Washington, D. C.,
Thursday, April 30, 1953.

* * * * *

392 The Court: The Government is going to rest, then?

Mr. McLaughlin: I just have on other thing I would like to offer in evidence at this time, marked Government's 4. It is a motion to suppress, filed by Mr. Mitchell, in behalf of the Defendant James Turner, alleging ownership of these premises.

Mr. Mitchell: It is part of the record. I don't—

The Court: Then you have no objection to it being received, Mr. Mitchell?

Mr. Mitchell: It isn't any statement—I might say this for the benefit of the Court: it isn't a statement or an affidavit filed and signed by the defendant. It is just a motion that I filed.

Mr. McLaughlin: It is filed by his attorney, if your Honor please, and signed by him.

Mr. Mitchell: You can't go by that.

Mr. McLaughlin: Oh yes. This is just a copy. The original is in the jacket.

Mr. Mitchell: Your Honor, it is just a matter of the technical rules of evidence as far as I am concerned.
393 He cannot in anywise bind the defendant by a statement signed by him, for evidence purposes.

The Court: You know, that makes a right interesting proposition, then. If any attorney can come on in and use as a basis for this right to file a motion, and then not be bound by it, why—

Mr. Mitchell: It can't bind him. We have had that to happen in the Court.

The Court: I am not going to assume that you as attorney are going to make a misrepresentation——

* * * * *

394 The Court: With that out of the way, what else have you got?

Mr. McLaughlin: With that out of the way, your Honor, the Government would like to offer its exhibits in evidence.

The Court: And which ones are they, Mr. McLaughlin?

Mr. McLaughlin: The Government will offer Exhibit 1, which is the eight capsules that were purchased on April 22, 1952.

The Court: Yes, sir.

* * * * *

Mr. McLaughlin: And Government's Exhibit 2,
395 which is the bottle containing the capsules.

And Exhibit 2-a, which is the empty bottle, Sal Hepatica bottle.

And Exhibit 3, which is the marked money, and 3-a is the record of the marked money made by the police, the serial numbers.

* * * * *

The Court: Have you gentlemen anything to say as to those exhibits?

Mr. Harris: Yes, your Honor.

The Court: Anything in addition to what you have previously said?

Mr. Harris: Nothing in addition but——

The Court: All right, sir, I will receive them subject to the objections heretofore interposed.

(Whereupon, Government's Exhibit Nos. 1, 1-a, 2, 2-a, 2-b, and 3 and 3-a, previously marked for identification, were received in evidence.)

* * * * *

396

Motion to Dismiss

Mr. Harris: We move at this time to dismiss Counts 12 and 13 on these grounds:

* * * * *

398 Mr. Harris: To continue, the 15 capsules allegedly were transferred by these defendants to Nedab, and through some action on the part of the Government it was separated into seven and eight capsules which the Government originally took the position would support two pairs of counts. In other words, a total of four counts.

Now, the Government, during the course of trial, and even before the trial, and certainly after the jury was sworn on yesterday, moved to dismiss counts 14 and 15, and that has been done.

There is no question in my mind, and there should be no doubt on the record but that the crime alleged in counts

15 and 14 is one and the same with the crime alleged
399 in counts 12 and 13. The proof necessary for a proof of counts 14 and 15 would be one and the same with the proof necessary to prove counts 12 and 13.

The statutes under which these two pairs of counts are laid are one and the same.

We therefore have a situation where these defendants at this time respectfully move your Honor to dismiss 12 and 13 on the ground of a former jeopardy.

* * * * *

413 Mr. Harris:

* * * * *

for reasons which I think I have already previously
414 mentioned to your Honor, certainly the doctrine of res judicata applies. And for that reason, also, these two counts should be dismissed.

The Court: Do you want to say something at this time, Mr. Mitchell?

Mr. Mitchell: Yes, your Honor.

* * * * *

In the present posture of the case, as it stands against the Defendant Turner, I respectfully move your Honor for a judgment of acquittal, to direct a judgment of acquittal because I think that the only thing—I believe that the only thing that the government can possibly contend for in this case is that there may be constructive possession.

* * * * *

416 I, therefore, respectfully submit, if your Honor please, that the evidence that has been so far adduced by the government with respect to the defendant James Turner, is insufficient; insufficient to allow the matter to go to the jury,

* * * * *

417 Mr. Harris: If your Honor please, I had not concluded as to the Defendant Lee. I had not gotten to 16 and 17.

Will your Honor hear me now?

The Court: Yes.

* * * * *

Mr. Harris: I only addressed myself for the first two counts of the present indictment; that is, 12 and 13.

With respect to the Defendant Lee, the only way that there could be a conviction on 16 and 17 would be for the jury to go in the jury room and first presume that there was a sale made to a character named Nedab, and on that presumption base a secondary presumption that if a sale was made to Nedab, than presumably this defendant

418 possessed some other narcotic other than the fifteen capsules allegedly sold to Nedab; and the third presumption would be that if a bottle containing 72 capsules be found in premises with some fluorescent powder on the cap of it, that the only person in the world who could have the ownership or possession of that bottle of 72 capsules, would be this defendant.

Now, that is in direct opposition to the proposition in the Russo case.

The Court: What about this woman admitting it, if the jury believed it? There is testimony to the fact that she said she did sell to Nedab certain of these capsules.

Mr. Harris: All right, let's assume that the jury believed that she admitted selling fifteen capsules to Nedab. I don't believe she ever admitted to anybody that she owned that bottle of 72 capsules.

The Court: That isn't for you to determine. That is for the jury, Mr. Harris, to determine whether she did or didn't.

* * * * *

421 Mr. Harris: Well, under the Fletcher case, your Honor, I think that would be equally applicable to the situation of this Defendant Lee, and for that reason counts 16 and 17 should be dismissed and, in short, your Honor, we are asking that all four of the remaining counts be dismissed as to the defendant Lee.

* * * * *

429 The Court: I can't say she was there working because the only evidence we have of that, if it is to be believed, would be her statement. And that, of
430 course, is not chargeable to him.

Mr. McLaughlin: No.

The Court: I am going to deny the motion at this time. I am frank to say to you, Mr. McLaughlin, I may come back to return to the proposition, and I will further consider yours, too, Mr. Harris. But we will go forward at this time.

* * * * *

Evidence on Behalf of Defendants

James S. Turner.

a defendant, was called as a witness for and in his own behalf and, having been first duly sworn, was ex-
431 amined and testified as follows:

Direct examination.

By Mr. Mitchell:

* * * * *

Q. Where do you reside, Mr. Turner? A. I now live at 4107 8th Street, Northwest.

Q. Calling your attention to the date of April 22, 1952, where did you then reside, sir? A. 2212 12th Place, Northwest.

Q. And are you the joint owner of premises 4107 8th Street, Northwest? A. I am.

Q. And who is the other owner? A. My wife.

Q. And what did you use premises—strike that. Did you at that time rent premises 4107? A. I did.

Q. And to whom did you rent those premises? A. I had it rented out to five different people.

Q. Do you now recall who they were? A. Yes. You want me to give you the names, individually?

Q. Yes. A. Mr. and Mrs. Chaney; Jefferson; 432 Duke; Elaine Lee, Harris.

Q. Now, at that time, sir, did you rent any other premises? 2212 12th Place, Northwest, you say? A. Yes, 2212 12th Place, Northwest.

Q. And was that also for a rooming house? A. It was.

Q. Calling your attention, sir, to the date of April 22, 1952, did you own or possess any narcotics in those premises 4107 8th Street, Northwest? A. I did not.

Q. Did you have any knowledge of the presence of any narcotics on April 22, 1952, in premises 4107 8th Street, Northwest? A. I did not.

Q. Now, calling your attention to that date, sir, April 22, 1952, did you have occasion to be at premises 4107 8th Street, Northwest? A. I did.

Q. Now, at about what time, sir, did you arrive there? A. I guess approximately 6:15 or 6:20.

Q. Now, at the time that you arrived there, or immediately prior to going into the premises, did you 433 see anyone? A. I met Gene Nedab.

Q. And where was he? A. He was about four doors from my house, going down the street toward Taylor Street.

Q. Did you have any conversation with Nedab? A. None whatsoever.

Q. Were you at any time on April 22, 1952, in the premises 4107 8th Street, Northwest, at the same time that Mr. Nedab was there? A. I was not.

Q. Did you have occasion on April 22, 1952, to sweep the sidewalk? A. No, I didn't.

Q. Now, had you been there on a prior day? Had you been there on April 21, 1952? A. I was there the day before.

Q. Did you sweep the sidewalk or do anything in front of the premises on that date? A. I planted out flowers on my lawn.

Q. Did there come a time, sir, that the persons who later identified themselves as police officers, and agents from the Narcotics Bureau, and United States Marshals, came into the premises 4107 8th Street, Northwest? A. They did the 22nd day of April, 1952.

* * * * *

434 A. Yes.

Q. Did you attempt to flee from those premises? A. No, I did not.

Q. Do you recall now what happened and what your actions were at that time? A. Yes.

Q. Would you kindly tell us? A. When the police officers knocked open the door, I was already upstairs. I was upstairs. The reason for being upstairs was to go up there to see about getting my rent.

Q. And then what happened? A. Then some one of them, I didn't know any of them and they didn't know me, because some one of them asked me, "Are you brother Turner?" So I says, "Yes." So they brought me to the downstairs.

Then they asked me about some narcotics and I didn't know anything about any narcotics.

Q. Did you ever attempt to go out a back door or anything of that sort? A. No. I could not be in two places at the same time, at the back door and upstairs.

* * * * *

Cross-examination.

By Mr. McLaughlin:

435 Q. Where do you say you live now? A. I now live at 4107 8th Street, Northwest.

Q. Well, that is the house we are talking about here; isn't that right? A. That is right.

Q. When did you go back there? A. When I left the District Jail.

Q. How long ago was that? A. That was a month and seven days after the 22nd of April, 1952.

* * * * *

The Witness: After my arrest the 22nd of April, I went back a month and seven days later.

By Mr. McLaughlin:

Q. Who was living at 4107 8th Street on April 22nd of 1952? A. I had roomers living there.

Q. Who were they? A. Mr. and Mrs. Chaney; Duke; Harris, and the Jeffers'.

Q. Who occupied the first bedroom downstairs in the front? A. Elaine Lee.

436 Q. Isn't it a fact, wasn't that your bedroom? A. No, it was not.

Q. Now, when the police went in there, wasn't there men's clothes in that bedroom? A. I suppose there was.

Q. Well, now, you can't suppose. You either know or you don't. A. It was men's clothing in there.

Q. There was men's; and you say that room was occupied by a woman? A. Yes, she had a boy friend.

Q. Oh, did her boy friend live there? A. I do not know.

Q. What? A. I do not know. She was a roomer.

Q. How often did you go to those premises? A. Approximately once a week.

* * * * *

437 Q. Well, do you sweep the sidewalk at times? A. Never.

* * * * *

Q. Now, what was Elaine Lee doing there on April 22nd? A. Living there.

Q. Where was she living? A. She lived in the front room downstairs.

Q. Well, is that the front room where the men's clothes were? A. It was.

Q. How much rent were you collecting from her? A. Twelve Dollars (\$12.00) a week.

* * * * *

439 Q. Did you know that he was a dope addict living in your house? A. Mr. who?

Q. Groins, I believe it was.

Mr. McLaughlin: Was that the name you used?

Mr. Mitchell: You testify.

Mr. Harris: It wasn't any addict; it was a peddler. A. Dope peddler.

Mr. McLaughlin. I will say a peddler, then.

By Mr. McLaughlin:

Q. Did you know this man was peddling dope? A. I knew it like the police did.

Q. What? A. I heard like the police did.

Q. When did you hear that this man was peddling dope in your house? A. After the 22nd of April.

* * * * *

441 Q. What kind of work did you do at that time that your mother had to go and collect the rents?

A. Well, I tell you, I have—at that time I had four trucks and I owned partly a farm in Maryland. I could be working any time.

Q. I know, but I am not asking you what you could have been; I was asking you what you were doing. A. Working.

Q. Working doing what? A. I just told you I had trucks.

Q. Well, did you work on the trucks? A. I did.

Q. Did you drive a truck? A. I did.

* * * * *

442 Q. Did you hear the police question Elaine?

Mr. Mitchell: Objection.

The Court: I will let him answer it, if he did
443 hear it.

By Mr. McLaughlin:

Q. Did you? A. Where?

Q. In the house? A. Yes.

Q. Didn't Elaine give the police another address, and
say she didn't live there? A. Don't remember.

* * * * *

Q. How long have you known Nedab? A. I hardly know
him.

* * * * *

444 The Court: I understood you to say that you met
Nedab some four doors away from your house; is
that true?

The Witness: That is right.

The Court: On the 22nd?

The Witness: That is right.

By Mr. McLaughlin:

Q. You knew Nedab at that time when you saw him,
didn't you? A. Sure.

* * * * *

Q. Do you know Nedab as a drug addict? A. No, I
didn't.

* * * * *

449 When you saw Nedab on April 22, you saw him
on the sidewalk, you say? A. I did.

Q. Now, how long after you saw Nedab on the side-
walk did the police come in your house? A. I say it was
about no longer than six minutes.

Q. Six minutes? A. Just about six minutes.

Q. Well, when the police came in your house—well, when you went in your house, did you see Elaine Lee in there?

A. I saw her sitting at the kitchen table.

Q. And who else was in there? A. My nephew.

Q. What is his name? A. Edward Winston.

* * * * *

450 Q. Was he working around there then? A. He was.

Q. What was the occasion for you going to the house that day? A. To collect rent.

Q. Who were you going to collect the rent from? A. From a nephew.

* * * * *

451 Q. Well, those rooms were all open there, weren't they? A. They knocked open every door in that house. Every door was locked.

Q. Every door; the front door, too? A. Every door.

Q. Elaine's bedroom, the front bedroom? A. Every door was locked.

Q. All locked? A. Yes.

Q. And Elaine was in the house at the time; is that right? A. She was in the kitchen.

* * * * *

452 Q. Now, when the police came in—oh, while the police were in those premises, did you go to the back door at any time? A. I did not.

Q. You never went near the back door? A. I did not.

Q. You didn't attempt to run out the back door? A. Did not.

* * * * *

Q. Now, while you were in those premises or on the occasions you would go to the premises—by the way, this kitchen that is there, do you furnish the utensils for the cooking? A. They were all left at the house for the use of the kitchen.

* * * * *

453 A. They were furnished at the time, but they were left there.

The Court: In other words, these pots and pans were your pans and you left them there?

The Witness: And I left the house.

* * * * *

456 Q. You remember the police recovering this Sal Hepatica bottle in the kitchen? A. I remember him showing it to me.

Q. Had you seen that in the kitchen prior to April 22nd? A. No.

Q. Did you tell the police officer that you had seen it and you knew it was out there? A. I did not. He lied.

* * * * *

457 Redirect examination.

By Mr. Mitchell:

Q. I show you these papers. Can you tell us what they are? A. These are rent receipts for the house at 2212 12th Place, Northwest.

Mr. Mitchell: May these be marked?

Mr. McLaughlin: I object to them, your Honor.

* * * * *

462 Mr. Mitchell: That constitutes the case for the Defendant Turner, your Honor.

* * * * *

Mr. Harris: The Defendant Lee will rest.

* * * * *

463 Mr. Mitchell: Your Honor, I am moving again for an acquittal.

The Court: I will deny it at this time.

And yours too, Mr. Harris, and for all the reasons heretofore stated.

* * * * *

508 Mr. Harris: Your Honor, I think for the record I should—I will, rather, except to the not granting of my prayers in the words, as drafted; that is, of course, on behalf of both defendants.

The Court: Certainly.

Mr. Harris: I wanted the Court to know particularly about Prayer No. 1, on behalf of the Defendant Turner, and I think that we are entitled to a prayer that places the law and the evidence along with each other.

The Court: I missed what you said, sir.

Mr. Harris: I said I think we are entitled to a prayer that blends, shall we say, the law along with the facts in the particular case.

* * * * *

Proceedings on Motion to Suppress

2 The Court: I will hear you next on the motion to suppress the evidence on this warrant. It is a motion filed by Mr. Mitchell.

* * * * *

Mr. Mitchell: I do not suppose there is any controversy of the fact that he is the title and record owner of the premises, is there, Mr. McLaughlin?

Mr. McLaughlin: No, I don't think so. I think we can show that.

* * * * *

3 The Court: I take it the question is whether the warrant was issued on probable cause?

Mr. Mitchell: Yes.

The Court: Do you find any fatal defect?

Mr. Mitchell: Yes.

The Court: Where is it?

Mr. Mitchell: There are two defects. There is the legal requirement that there be an affidavit accompanying the issuance of the warrant and that they be served—

The Court: An affidavit served upon the defendant?

Mr. Mitchell: Yes, sir.

4 The Court: Suppose you give me authority on that. You do not mean the affidavit filed in the Commissioner's office for the securing of it?

Mr. Mitchell: Yes.

The Court: You say in addition to the execution of the search warrant the affidavit goes along with it?

Mr. Mitchell: What the statute says is that there has to be present on the face and in the body, or in the body of the warrant or attached to it, facts on which to predicate probable cause.

In other words, if the warrant merely states a conclusion, if Your Honor please, as Your Honor will recall, it is defective and subject to quashing.

Mr. Mitchell: Yes.

The Court: Where do you do that and how do you do it?

Mr. Mitchell: By the present rules, if Your Honor please, by a motion to suppress and quash the warrant.

The Court: In the District Court?

Mr. Mitchell: Yes.

The Court: So the Court passes on it. You mean the face of the search warrant and a warrant to apprehend persons spells out in detail just what the probable cause is?

Mr. Mitchell: Yes.

5 The Court: Let us settle that now. I will hear from you, Mr. McLaughlin.

Mr. McLaughlin: It is my understanding that the probable cause must be produced before the Commissioner before the issuance of the warrant.

The Court: Have you ever known an affidavit to go along with the search warrant and attached to it?

Mr. McLaughlin: No.

The Court: I never heard of it in 22 years.

* * * * * * * * *

Mr. Mitchell: The second is that the affidavit, which is apparently in the file, contains nothing but hearsay alone—

The Court: You know what we are talking about at the moment. Your first paragraph says the warrant is fatally defective on its face. Your first point is that it does not set out on the face of the warrant the detail of the probable cause.

Mr. Mitchell: Yes, sir.

* * * * *

9 Mr. Harris: Title 33, Section 414 of the District of Columbia Code, 1940 Edition. I imagine it is the same in the 1951 edition.

The Court: What section, please?

Mr. Harris: 414. I think Your Honor will find in the statute this language: The warrant itself shall state the particular grounds of the probable cause for its issue.

* * * * *

16 Mr. Harris: I haven't cited to Your Honor the Federal Rules. Surely if this be a Federal jurisdiction and the Federal Rules control, I do not think that there is any law, as far as criminal procedure is concerned, that is not superceded by these rules. I am sure the Government will concede that.

* * * * *

19 **Joseph A. Gabrys**

was called as a witness, and, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Mitchell:

* * * * *

Q. What is your assignment, Officer? A. I am a detective sergeant, assigned to the Narcotic Squad of the Metropolitan Police Department.

Q. Were you so assigned on the 5th day of April, 1952? A. Yes, I was.

* * * * *

Q. Did you have occasion, sir, to go to premises 4107 Eighth Street, Northwest? A. On what day?

Q. Did you have an occasion to go there on April 22? A. On April 22?

Q. Yes. A. Yes, I did have.

* * * * *

20 Q. Did you have in your possession at that time a warrant? A. I didn't have, sir; the marshal had.

Q. Who was the marshal?
* * * * *

A. Marshal Stafford and Marshal Marshall.

* * * * *

21 Q. Were you present at the time the warrant was exhibited and a copy thereof given to the defendant James Turner? A. I believe I was, yes, sir.

* * * * *

Q. Did you give the copy of the warrant to Mr. Turner? A. No, sir, I didn't.

Q. You saw that given to him? A. I was there when it was given to him. I don't recall who did.

* * * * *

22 Q. Do you recognize this, sir, as being a copy of the warrant that was in the possession of your group at the time you went to these premises? A. Yes, sir.

Q. To your knowledge, was anything other than this paper given to Mr. Turner? A. I don't recall, sir.

Q. Did you see anything other than this piece of paper given to Mr. Turner? A. I don't recall seeing anything more.

* * * * *

Q. On the occasion of your presence with any of your fellow officers at the time that you were the superior officer, did any of them go in the premises, to your knowledge?
23 A. Prior to April 22?

Q. Yes. A. No, sir.

Q. Did you know whether 4107 Eighth Street, Northwest, was a rooming house or an apartment house or not, sir, of your own knowledge? A. No, sir, I did not know.

Q. Did you, sir, ever see the defendant James Turner hand any narcotics to either Nedab or Miss Rucker? A. No, sir, I didn't.

* * * * *

The Court: I am about to put into evidence, unless it is put in for me, the affidavit which is in the record.

Mr. Mitchell: If Your Honor please, what I am merely attempting to do at this time is this, I will say very frankly to Your Honor, because Officer Gabrys has not answered the question: I think under the law, and certainly under the strength of the Worthington case and the companion cases, that we have a warrant, and even in the face of what is contained in this affidavit—

24 The Court: Have you got a copy of the affidavit?

Mr. Mitchell: We had to come and get it. No copy was served upon the defendant. The only thing that was served upon the defendant was the warrant. We came here in Your Honor's court the other day and we ourselves wrote it out in long hand and later had it typed—the alleged affidavit, allegedly certified to or sworn to at the time of the issuance of the warrant.

The Court: Let me put this question to you, because it is the whole crux of the case.

Do you find in this application for the search warrant language which would not, in your judgment as a lawyer, indicate probable cause?

Mr. Mitchell: In my judgment as a lawyer, it is not sufficient.

The Court: Would you point that out to me?

Mr. Mitchell: Yes, Your Honor, because there is no place in this affidavit at all where the affiant or affiants or any of them or all of them together state anything occurred of their own personal knowledge inside these premises. They deal in generalities.

* * * * *

25 Q. Officer Gabrys, was either Louise Rucker or Major Nedab in your employ from April 5, 1952, through and including April 22, 1952? A. No, sir, they were not.

Q. Officer Gabrys, did you at any time ever accompany Major Nedab or Louise Rucker into premises 4107 Eighth Street, Northwest? A. No, sir, I never did.

Q. With reference to premises 4107 Eighth Street, Northwest, did you at any time personally search or direct the searching of Major Nedab or Louise Rucker prior to their going to premises 4107 Eighth Street, Northwest? A. No, sir.

Q. Prior to April 22, including April 22, 1952, was Major Nedab an informer for your department? A. He was not, no, sir.

Q. Was Louise Rucker an informer for your department? A. She was not.

Q. During the period of April 5 through and including April 22, 1952, did you know Major Nedab as
26 a peddler of narcotics? A. Yes, sir.

Q. Did you know Louise Rucker as a peddler of narcotics? A. Yes, sir, I did.

* * * * *

By the Court:

Q. Officer, I want to hand you the third page of what purports to be an application for a search warrant on premises 4107 Eighth Street, Northwest, and ask if you can identify the signature among the group that appears at the upper right-hand portion, at the bottom? A. Yes, sir, I can.

Q. Whose signature is that? A. That is my signature.

Q. You signed that prior to getting the warrant itself? A. I did, sir.

Q. And swore to it before the Commissioner? A. Yes, sir, I did.

Q. Were the other officers present at that time? A. They were.

Q. In the issuance of the warrant in addition to the affidavit, did Commissioner Lawrence take any testimony that you recall? A. No, sir.

* * * * *

27 Q. What time of day was it you made the appli-
28 cation, sir? A. I don't recall.

Q. Do you recall whether it was morning, afternoon, or night? A. No, I do not.

Q. What time of day did you go in premises 4107 Eighth Street, Northwest? A. It was about 7:15—between 7:15 and 7:30 in the evening.

* * * * *

29 Q. In swearing to this, Officer Gabrys, did you
have these facts of your own personal knowledge to
which to swear? A. I had those facts from memoranda,
which I also wrote up, by Officer Longo during the in-
vestigation that was conducted.

* * * * *

30 The Court: Is there any objection to the affidavit
being received in evidence in the case?

Mr. Mitchell: No, Your Honor.

The Court: It may be received.

(The document referred to was received in evidence as Government's Exhibit 1.)

Mr. Harris: I would like the record to show that the affidavit being received is not being received as being the original of the warrant and affidavit served upon the defendant in this case.

The Court: We are concerned with whether or not it sets forth probable cause supported by any testimony that you elicit on the examination of witnesses.

* * * * *

Thomas W. Andrew

was called as a witness, and, being first duly sworn, was examined and testified as follows:

* * * * *

31 Q. What is your occupation, sir? A. I am agent in charge of the Washington field office, U. S. Bureau of Narcotics.

* * * * *

Q. On April 22, 1952, did you have occasion to go to premises 4107 Eighth Street, Northwest? A. I did.

* * * * *

32 Q. Was there a warrant at the time you went into these premises, to your knowledge? A. There was a search warrant, yes, sir.

Q. Had you seen that warrant? A. I saw it at the premises.

Q. Saw it in the premises? A. Yes.

Q. Did you witness a copy of that warrant given to the defendant? A. I believe I did.

Q. At that time, sir, did you see anything other than the warrant itself and the nature of the document, the paper? A. No, I did not.

* * * * *

34 Q. Agent Andrew, what time was it that you went into these premises, to the best of your recollection, sir? A. About 7:20 p. m.; maybe a little earlier.

Q. Pursuant to the warrant you had in your possession, did you engage in a search of the premises? A. I did.

* * * * *

Q. Agent Andrew, at the time you went into these premises with the search warrant, did you have any arrest warrant, sir, to your knowledge?

The Court: I thought the man said he had a
35 search warrant.

Mr. Mitchell: Yes, sir. I am asking him, Did he also have an arrest warrant?

The Court: You mean that that is necessary under the law? The function of a search warrant is both that of searching the premises and apprehending the defendant.

Mr. Mitchell: The defendant is not named in this warrant.

The Court: He doesn't have to be. As I understand it, he left a copy with James Turner. There is an indication that there was a bottle containing 71 capsules of suspected heroin. The evidence before me indicates Turner owns the house.

Mr. Mitchell: Yes, sir. We do not deny that. Turner owned the house. We also stated to Your Honor it was a rooming house; that he didn't live there. What I want to call to Your Honor's attention, and the reason I asked the question——

The Court: Go ahead. You may ask him. We will save time.

The Witness: I don't know whether there was an arrest warrant or not.

By Mr. Mitchell:

Q. What, if anything, did you see James Turner do at the time you were there?

* * * * *

36 The Witness: I saw him do nothing when I was in there.

* * * * *

Q. There was a seizure made of a bottle containing some capsules.

I believe 71; is it, Your Honor?

71 capsules of suspected heroin. Where did you find that bottle, sir? A. I found that in the kitchen sink near the drain of the kitchen sink. There were two or three

other articles in the sink at the time, and a dish or two, a cup.

* * * * *

42 Q. Probably I misunderstood you, but didn't you previously testify that you were present at the time that Turner was placed under arrest? A. I testified that I believe that he was already in custody, whether he had actually been placed under arrest before that. I think that occurred when Sergeant Gabrys and I were together with him in the living room. Whether he had been placed under arrest by some other officer before that, I had no knowledge of that.

* * * * *

43 Q. You found no such substance or money or any other connection with the narcotics on the defendant Turner, is that right? A. There was none as far as I remember, no, sir.

* * * * *

The Court: Your next witness.

Mr. Mitchell: Officer Longo.

Mr. McLaughlin: May we approach the bench on that, Your Honor?

The Court: Yes.

(At the bench:)

Mr. McLaughlin: In regard to any testimony that Officer Longo might give to questions asked, I think
44 that I might be able to stipulate with my friend as to what his testimony would be.

The reason why I say this is that I have been informed that Officer Longo at the present time is acting in certain undercover work. What part of the city it is, I do not know; but I was informed during the recess that not only the defendants here but other people are involved who the police have information are dealing in narcotics. By putting him on the stand, they would see him, and there

is a question whether it would affect the cases he is working on now.

The Court: Is he a regular narcotic agent?

Mr. McLaughlin: Yes, with the Metropolitan Police Department.

Mr. Harris: Hasn't he testified recently in open court?

The Court: I do not know.

Mr. Mitchell: He testified in the Rucker case.

Mr. Harris: There is no question of his identity.

Mr. Mitchell: That is the only way we can controvert it.

Mr. McLaughlin: That is the information that was given me at the recess.

Mr. Mitchell: He is the one that wrote all those facts down.

* * * * *

45 The Court: Have you any other witness you could use?

Mr. Mitchell: No, sir.

Mr. McLaughlin: What questions would you ask Longo? Maybe I can answer then and we could agree that if he were here he would testify so and so.

Mr. Mitchell: All right. Will you agree that Longo at no time searched any of these people who were in these premises? We have that testimony from Sergeant Gabrys.

Mr. McLaughlin: Yes, I will stipulate to that.

The Court: That he did or did not?

Mr. McLaughlin: Did not.

Mr. Mitchell: Will you also stipulate that he at no time went into the premises?

Mr. McLaughlin: Yes; that is into the premises—

Mr. Mitchell: 4107.

Mr. McLaughlin: Inside, yes—that is previous to the search.

Mr. Harris: Will you stipulate further that Longo will testify that neither Rucker nor Nedab at any time told

him that they made any purchase of any narcotic from the defendant Turner?

Mr. McLaughlin: No. If he was here he would testify that they did tell him that.

Mr. Harris: Then there is a question of fact, because we have Rucker as a witness.

* * * * *

49 Mr. Mitchell: Mr. McLaughlin and I have talked to the witness, and in the brief period of time we had—he just arrived here; he didn't get here until late—as far as we have been able to determine, he has no recollection as to the girl ever saying that the girl ever purchased narcotics from the defendant James Turner.

Mr. McLaughlin: In other words, his recollection is that she bought it at that house, but he would not say she said she bought it from Turner.

The Court: Your stipulation is that if Narcotic Agent Longo was called, he would say he did not search the informer?

Mr. Mitchell: We got the answer to that. He said he did not at any time search him.

The Court: And, second, that he himself did not go into the house prior to the raid of April 22, 1952?

Mr. McLaughlin: That is right.

The Court: And that one Louise Rucker did not
50 say to him that she had purchased narcotics from James Turner?

Mr. McLaughlin: Yes, Your Honor.

The Court: That is the agreement between both of you?

Mr. Mitchell: Yes.

* * * * *

The Court: Is there any testimony from the Government?

Mr. McLaughlin: No, I do not think so. We will go on the affidavit.

* * * * *

The Court (Kirkland, J.):

* * * * *

Counsel for the defense has relied upon the case of United States v. Kaplan, pointing to the fact that unless the person be positive that something be within the premises or the person sought to be arrested and searched, it shall issue only in the day time.

* * * * *

54 Accordingly, the Court is going to hold that there was probable cause for this particular issuance.

The Court will further hold, as a matter of law, that Section 41 of the Federal Rules of Criminal Procedure applies, warrants executed by federal officers; and the direction there is, reading 41 (c):

55 "A warrant shall issue only on affidavit sworn to before the judge or commissioner and establishing the grounds for issuing the warrant."

That was done in this case. The Court has held that there was probable cause in the affidavit, in the warrant, and in the testimony given by the officers to establish probable cause.

And, continuing:

"If the judge or commissioner is satisfied that grounds for the application exist or that there is probable cause to believe that they exist, he shall issue a warrant identifying the property and naming or describing the person or place to be searched. The warrant shall be directed to a civil officer of the United States authorized to enforce or assist in enforcing any law thereof or to a person so authorized by the President of the United States. It shall state the grounds or probable cause for its issuance and the names of the persons whose affidavits have been taken in support thereof. It shall command the officer to search forthwith the

person or place named for the property specified. The warrant shall direct that it be served in the day-time, but if the affidavits are positive that the property is on the person or in the place to be
 56 searched, the warrant may direct that it be served at any time. It shall designate the district judge or the commissioner to whom it shall be returned."

Now, having observed the entrance of a man who remained 10 minutes and then returned and gave the six capsules in question, executing the affidavit presumably that afternoon, and promptly executing it, there is no question in this Court's mind that that was seasonable, proper, and that probable cause was there.

Accordingly, at this time the Court will overrule the motion to suppress the evidence; and, having reserved on the former motion, the ruling is that, as a matter of law, the execution of the search warrant having been made, the affidavit on which it was predicated does not have to be served upon the defendant or one arrested at the time of the search.

* * * * *

Mr. Mitchell: I just would like to make this correction for the Court. Your Honor stated in your conclusions, in your ruling as a matter of law, with reference to the matter of the affidavit, that it is not necessary that an affidavit be attached to the warrant. With that we agree. Our point, if Your Honor please, so the record will be
 57 clear, is that if the search warrant itself does not on its face contain the facts constituting probable cause, then there must be attached to it an affidavit in which the facts establishing the probable cause are set forth. That is our position.

The Court: The Court disagrees with you and adheres to its ruling.

* * * * *

BRIEF FOR APPELLEE AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11918

JAMES S. TURNER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 11920

ELAINE A. LEE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEO A. ROVER,

United States Attorney.

LEWIS A. CARROLL,

ARTHUR J. McLAUGHLIN,

SAMUEL J. L'HOMMEDIEU, JR.,

Assistant United States Attorneys.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED FEB 26 1954

Joseph W. Stewart
CLERK

STATEMENT OF QUESTIONS PRESENTED

1. Where two sales of narcotics are made at the same time and different testimony is required to prove each sale, may such sales be charged in separate counts, and does dismissal of one of the counts have the effect, under the principles of double jeopardy and res judicata, of requiring the dismissal of the other count as well.

2. Was the evidence sufficient to sustain the verdict.

3. A. Where police officers had observed a number of persons enter certain premises over a period of several weeks and return from those premises with illegal narcotic drugs which in some cases were immediately sold to an undercover agent, was there probable cause for issuance of a search warrant.

B. Where the application for search warrant recites that the affiants are positive that illegal property is being concealed on certain premises, is the United States Commissioner justified in issuing a night-time search warrant.

C. Is a nighttime search warrant required where the search is made not later than twenty-three minutes after sunset.

4. Must affidavits supporting issuance of a search warrant be attached to the copy of the warrant which is actually served.

5. Is the prosecution required to prove that heroin is a derivative of opium.

(1)

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11918

JAMES S. TURNER, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 11920

ELAINE A. LEE, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA*

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

A. Search Warrant

On April 22, 1952, six officers of the Narcotic Squad of the Metropolitan Police Department submitted to the United States Commissioner for the District of Columbia an application for search warrant of the premises 4107 8th Street NW., Washington, D. C., in the form of two sworn statements. The first affidavit reads in pertinent part as follows:

The undersigned being duly sworn deposes and says:
That he (is positive) that (on the premises known as)
4107 8th Street NW., Washington (a two story brick

dwelling occupied by Mrs. Dorothy D. Turner) in the District of Columbia, there is now being concealed certain property, namely Heroin, Syringes, Tourniquets, Cookers, and paraphernalia used in the preparation of Heroin for retail. Any other paraphernalia used in the preparation and dispensation of Heroin and any other narcotic drugs. Any other narcotic drugs illegally held. The facts to sustain this are set forth in the affidavit attached hereto and made a part hereof, which are in violation of U. S. Code Title 26, Section 2553a, and which are being held illegally. And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows: See the affidavit attached hereto and made a part hereof.

Sherwood H. Herring

PVT. SHERWOOD HERRING, NARC. SQD., MPDC

Irving W. Brewer

PVT. IRVIN W. BREWER, NARC. SQD., MPDC

Seymour Raboy

PROB. DET. SEYMOUR RABOY, NARC. SQD., MPDC

Joseph A. Gabrys

DET. SGT. JOSEPH A. GABRYS, NARC. SQD., MPDC

Dante Longo

PVT. DANTE LONGO, NARC. SQD., MPDC

Guy W. Holcomb, Jr.

PROB. DET. GUY W. HOLCOMB, JR., NARC. SQD.,
MPDC

Sworn to before me, and subscribed in my presence,
April 22, 1952.

C. S. LAWRENCE,
United States Commissioner, (Gov. App. 1).

And the second affidavit reads in pertinent part as follows:

Narcotic Squad.

APPLICATION FOR DAY OR NIGHT TIME SEARCH WARRANT

Premises 4107 8th Street NW., Washington, D. C. A two story brick dwelling occupied by Mrs. Dorothy D. Turner and others

About 8:20 p. m., Saturday, April 5, 1952 Private Dante Longo, Narcotic Squad, while engaged in an undercover capacity investigating the illicit narcotic drug activities in this city went to the 4100 block of 8th Street NW. with a special employee who was trying to make arrangements for Officer Longo to purchase narcotic drugs from Jessie Jeffers at 4101 8th Street NW. Jeffers being a well known drug addict peddler residing at above address. Officer Longo parked his automobile in front of 4107 8th Street NW. where he let the Special Employee get out of his car and observed him to enter 4101 8th Street NW. where he remained a short while. During this time Officer Longo observed several colored people enter 4107 8th Street NW., and among these was one Louise Rucker, Colored, 20 to 25 years, of 2427 K Street NW. from whom Officer Longo had purchased 4 capsules of Heroin, in this same area, on April 3, 1952. Officer Longo also observed that the people, including Louise, would enter 4107 8th Street, remain a short while and leave. Sometime later Officer Longo observed the special employee coming out of 4101 8th Street NW. and Louise Rucker coming out of 4107 8th Street NW. they met on the sidewalk and Louise entered the automobile of Officer Longo along with the special Employee. After Louise got into the car Officer Longo observed her count about 6 small white capsules of white powder which she had in her hand. Officer Longo asked her if he could purchase some of the Heroin but she told him that she could not sell him any as she had picked up for a man she identified as John Kruse.

About 9:05 p. m. Monday, April 7, 1952 Officer Longo made arrangements with one Eugene Major Nedab, a peddler of narcotic drugs, to make a purchase of some Heroin. Officer Longo also learned at this time that Nedab would probably go to 4107 8th Street, to make his purchase. Arrangements were then made by myself for Officer Seymour Raboy to cover Officer Longo during his purchase of narcotic drugs from the above address. Officer Raboy preceeded Officer Longo to the area of 8th and Taylor Street NW. where he took up an observing position on the S. W. Corner of Taylor Street at 8th Street NW. About 9:12 p. m., same date, Officer Raboy observed Officer Longo drive up in his automobile accompanied by Nedab. Officer Longo parked his automobile across Taylor Street from where Officer Raboy was observing and Officer Raboy saw Nedab leave Officer Longo's automobile and enter 4107 8th Street where he remained a short period of time returned to Officer Longo's car and Officer Longo drive away. Later in the office of the Narcotic Squad Officer Longo turned over to Sgt. Gabrys four capsules of white powder on which Sgt. Gabrys made a preliminary field test which indicated a positive reaction of the presence of a narcotic drug of the Opiate Group. Officer Longo further stated he paid Nedab \$10.00 for the 4 capsules.

On April 9, 1952 Officer Longo made another appointment with Major Eugene Nedab to purchase some narcotic drugs from him. At the same time Sgt. Gabrys accompanied by Officer Guy W. Holcomb, Jr. and Irvin Brewer went to the vicinity of 8th and Taylor Streets NW., in Sgt. Gabrys' private automobile. On arrival on the scene Sgt. Gabrys parked on the S. E. Corner of 8th and Taylor Street NW. where at about 10:38 p. m., same date, Officers Gabrys, Brewer and Holcomb observed Officer Longo drive North on 8th Street NW., and turn West on Taylor Street NW. parking a short distance below the NW. Corner of Taylor and 8th Streets NW. Major Nedab was observed by all of the above Officers to get out of Officer Longo's automobile and en-

ter 4107 8th Street NW. where he remained a short period of time then came out and entered Officer Longo's automobile where he remained a short while then re-entered 4107 8th Streets NW. after several back and forth trips Officer Longo accompanied by Nedab finally left the scene. Later in the office of the narcotic squad, Officer Longo turned over to Sgt. Gabrys 53 capsules of white powder on which Sgt. Gabrys made a preliminary field test which disclosed the presence of a narcotic alkaloid of the Opiate group in the same. Officer Longo stated that the reason for the many trips back and forth between his car and 4107 8th Street NW. was that he was trying to Negotiate for an ounce of Heroin with Nedab.

On April 10th, 1952 Officer Longo made arrangements with Louise Rucker to purchase some narcotic drugs from her. At the same time Officers Gabrys, Brewer, and Herring went to 8th and Taylor Streets NW. where, from the S. E. Corner of Taylor and 8th Streets NW. they observed Officer Longo drive North on 8th Street NW. and turn left into Taylor Street NW. parking a short distance below the corner of 8th and Taylor Streets NW. Louise Rucker was then observed by all officers to leave the automobile of Officer Longo and enter 4107 8th Street NW. where she remained a short period of time before rejoining Officer Longo in his automobile after which Officer Longo drove from the scene. A short while later Officer Longo turned over to Pvt. Herring 13 small capsules each containing a white powder on which he made a preliminary field examination which disclosed the powder to have a positive narcotic alkaloid reaction.

About 12: 30 p. m., Tuesday, April 22, 1952 Officer Longo met Eugene Major Nedab at Connecticut Ave., and Que, NW. from where they proceeded to 8th and Taylor Streets NW., where, in the meantime, Officers Tennyson and Raboy had gone before them and Pvt. Raboy took up an observing position on the S. W. Corner of 8th and Taylor Streets NW. During this observation he observed Officer Longo come to 8th and Taylor Streets

NW. and park on the S. E. Corner of 8th and Taylor Streets NW. They observed Nedab get out of the automobile at 12: 44 p. m. and enter premises 4107 8th Street NW. which he left at 12:54 p. m. and re-entered Officer Longo's automobile. Sometime later officer Longo turned over to Officer Herring, in the office of the narcotic squad 6 capsules of white powder which Officer Herring made a preliminary analysis on and which indicated the presence of a narcotic alkaloid.

From the evidence obtained as described above and from reliable information obtained from other sources that narcotic drugs are being sold and kept in premises 4107 8th Street NW., we make this application for a search warrant on these premises.

Sherwood H. Herring	Joseph a. Gabrys
PVT. SHERWOOD HERRING,	DET. SGT. JOSEPH A. GABRYS
NARC. SQUAD.	Dante Longo
Irvin A. Brewer	PVT. DANTE LONGO, NARC.
PVT. IRVIN A. BREWER, NARC.	SQUAD.
SQUAD.	Guy W. Holcomb, Jr.
Seymour Raboy	PROB. DET. GUY W. HOL-
PROB. DET. SEYMOUR RABOY,	COMB, NARC. SQD.
NARC. SQD.	

Subscribed and sworn to before me this 22nd day of April 1952.

Cyril S. Lawrence,
CYRIL S. LAWRENCE,
*United States Commissioner for
the District of Columbia.*

issued S. W. "Day and night time"

C. S. L. 5398 (J. A. 4-7)

The United States Commissioner executed a day and night time search warrant for the premises described in the application. (J. A. 2). The search was made and certain narcotics were found on the premises. (J. A. 3). James S. Turner and Elaine A. Lee were arrested.

B. Proceedings

On August 11, 1952, a seventeen count indictment was returned against the appellants (J. A. 8-12) alleging violations of 21 U. S. C. Section 174, and 26 U. S. C. Sections 2553 (a) and 2554 (a). On September 11, 1952, Turner filed a motion to suppress evidence, a motion to dismiss counts 10, 11, 12, 13, 14 and 15, and a motion to strike counts 10, 11, 12, 13, 14 and 15, and Elaine Lee moved to dismiss counts 10, 11, 12, 13, 14 and 15, (J. A. 12-13) and moved for a severance. The motion to suppress, the motions to dismiss, Turner's motion to strike, and Lee's motion for a severance, were all denied (J. A. 14, 122), but motion for independent analysis of samples of evidence was granted conditionally, and motion for a bill of particulars was granted in part and denied in part. (J. A. 14). The Government filed bills of particulars on October 8, 1952. (J. A. 15). Trial was had, and during that trial, Government motion to dismiss counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14 and 15 of the indictment was granted. (J. A. 84). At the close of the Government's case appellant Turner moved for a judgment of acquittal and appellant Lee moved for dismissal of the four remaining counts. Both motions were denied. (J. A. 101). Finally, at the close of all the evidence, both appellants moved for judgments of acquittal but the motions were denied. (J. A. 108). The jury found both appellants guilty on all four remaining counts and on June 26, 1953, the Court sentenced Turner to imprisonment for 20 months to five years and a fine of \$100.00 on each count, the sentences under counts 12 and 13 to run concurrently with each other and on counts 16 and 17 to run concurrently with each other, but 16 and 17 to run consecutively to 12 and 13. Elaine Lee was sentenced to imprisonment for one year to three years and a fine of \$100.00 on each count, the sentences under counts 12 and 13 to run concurrently with each other and on counts 16 and 17 to run concurrently with each other but counts 16 and 17 to run consecutively to 12 and 13. (J. A. 16-18). This appeal followed.

C. Trial

The following testimony was adduced at trial: On April 22, 1952, at approximately 6:20 p. m., Officer Dante Longo met

with a procurer of narcotics, one Eugene Major Nedab, on Connecticut Avenue. The two men entered Longo's automobile and drove to 8th and Taylor Streets NW., where the car was parked about 6:45 p. m. (J. A. 29). Longo gave Nedab \$20.00 in bills, the serial numbers of which had previously been recorded by the Metropolitan Police Department and which had been marked with a fluorescent powder (J. A. 66, 29). He did not give him the Treasury Department order form. (J. A. 29). Nedab left the Longo automobile and walked toward 4107 8th Street. (J. A. 88). There is a conflict of testimony as to what happened next. Officer Herring testified that when Nedab arrived in front of the Turner premises he was met by appellant Turner who was standing outside sweeping the front walk, that the two men had a short conversation, that they both entered the house, and that Nedab alone came back out five to seven to eight minutes later. (J. A. 88). Turner himself, on the other hand, said that he went to 4107 8th Street about 6:15 or 6:20 p. m., that before entering the premises he met Nedab about four doors away going toward Taylor Street, that he did not talk to Nedab, that he did not sweep the sidewalk, and that he was at no time within the premises at the same time with Nedab. (J. A. 102 and 103).

Nedab returned to Longo's car a few minutes after having left it and handed Longo eight capsules, each containing a white powder. Longo and Nedab drove off and Nedab was arrested. (J. A. 30). These eight capsules became Government Exhibit No. 1 and were analyzed by a Treasury Department chemist and found to contain heroin hydrochloride and quinine hydrochloride. (J. A. 51). Meanwhile, Sgt. Holcomb, Officer Brewer, Officer Herring, and two Deputy Marshals had proceeded toward 4107 8th Street. They arrived in front of the house, knocked once, and when no one answered, started to break the door down. They saw Turner and Miss Lee come out of the front room and run toward the kitchen (J. A. 88-89). Meanwhile, another group of officers including Raboy, Wurms, Tennyson, and Agent Fullmer, had arrived near the rear door, and they saw both appellants come out of that door. (J. A. 92). A male voice was heard to say, "Here they come," (J. A. 93), and both appellants ran back into the

house. (J. A. 92-93). The front door had meanwhile been broken and Turner was seen running upstairs (J. A. 67, 78), while Elaine Lee remained in the kitchen, seated at a table. (J. A. 67, 79). Again, Turner's testimony conflicts with that given by the officers. He said that he did not attempt to flee the premises at any time and that when the police officers knocked on the door he was already upstairs. (J. A. 103-104).

The officers entered the premises through both doors. Sgt. Gabrys had the search warrant. (J. A. 36). Officer Holcomb arrested Miss Lee, who, upon demand, surrendered about \$23.00 in bills she had on her person. (J. A. 67). The serial numbers on some of the bills corresponded with the numbers recorded earlier and an ultraviolet examination showed that those bills had been marked with fluorescent powder. (J. A. 69). Sgt. Andrew arrested and searched appellant Turner but found neither narcotics nor marked money on him. (J. A. 85-86). The officers searched the various rooms of the house and Sgt. Andrew recovered from among some dishes that were in the sink a small Sal Hepatica bottle (J. A. 37, 80) which contained 72 capsules, with a white powder, but there were no Government stamps on the capsules or the bottle. (J. A. 39). That bottle with the capsules was subsequently admitted into evidence as Government Exhibit No. 2 and testimony revealed that the capsules contained heroin hydrochloride and quinine hydrochloride. (J. A. 52). Sgt. Andrew found a second Sal Hepatica bottle on the shelf of the cabinet just above the kitchen sink (J. A. 81, 40), and it, too, bore no Government stamps of any kind. (J. A. 84). The bottle was admitted as Government's Exhibit No. 2a. The walls of that bottle contained traces of heroin hydrochloride and quinine. (J. A. 52).

Sgt. Andrew questioned appellant Turner who denied that he had ever seen Gov. Exh. 2 but admitted having seen Gov. Exh. 2a before. (J. A. 82). Turner, in his testimony, said that Andrew lied when he testified that Turner had admitted having seen 2a. (J. A. 108). Sgt. Gabrys also questioned Turner who denied knowing anything about narcotic drugs in any way, denied living on the premises and denied owning them (J. A. 43), but Paul Collins, an employee of the Real Estate Tax Division of the Assessor's Office of the District of

Columbia, said that the records of his office showed that title to the premises was vested in James S. Turner and Dorothy D. Turner, as tenants by the entirety. (J. A. 32). Collins, on cross-examination, said that he did not know whether the owner of the premises was the same person as the accused in the instant case. (J. A. 32).

Sgt. Gabrys and Officer Holcomb questioned Elaine Lee in the presence of Turner. She had no explanation for the money on her person nor for the narcotics found on the premises. She also failed to explain how fluorescent powder could have been found on her hands and the bottle cap. (J. A. 46-47). About 11:00 p. m., April 22, at the Women's Bureau, Gabrys again questioned Miss Lee in the presence of Holcomb. She then admitted that Turner had told her that he was going out and that there was a bottle of "stuff" in the bedroom and for her to "take care of it." (J. A. 56, 71). She said that she did not know what was in the bottle. Turner then left and returned later with Nedab. Nedab asked her for fifteen "pieces" which she sold him out of the bottle for \$15.00 (J. A. 57, 71). The Court several times admonished the jury that Miss Lee's admissions could and should in no way be chargeable against Turner.

Appellant Lee did not take the stand and no defense testimony was offered except that of Turner himself.

SUMMARY OF ARGUMENT

The two counts involving eight capsules upon which appellants were found guilty and the two counts involving seven capsules which were dismissed upon motion of the Government involved two different sales and different evidence was necessary to prove each of the two sales. Under such circumstances, dismissal of some of the counts which took place during trial—but which had been agreed upon prior to trial—is no bar to a finding of guilty on the other counts. Even if the sales here involved were to be considered as but a single sale, still under the rule in *Barsock v. United States*, 177 F. 2d 141, appellants had no right to a dismissal of the remaining counts upon the ground of double jeopardy.

Since the Government was not required to prove that narcotic drugs were purchased without the written order on the

form prescribed, this exception in the statute being a defensive matter peculiarly within appellants' knowledge, and since there was ample evidence upon which a verdict of guilty could have been based, the trial court was correct in denying appellant Turner's motion for judgment of acquittal.

There was probable cause for issuance of the search warrant. *Brinegar v. United States*, 338 U. S. 166. Although the warrant was valid for both day and night time search, this search was conducted during daylight hours. The copy of the warrant served upon the occupant of the premises is complete without the affidavits supporting its issuance. 11,809—*Shay v. United States*; 11,786—*Ledbetter v. United States*.

The Government was not required to prove that the narcotics seized were a derivative of opium.

ARGUMENT

I

There was no double jeopardy

The first point raised by appellants is that the Court should have granted their motions for judgment of acquittal with respect to counts 12 and 13 on the grounds of former jeopardy and res judicata. These are the facts giving rise to that contention.

The defendants were originally charged in 17 counts, but only four are material in so far as the double jeopardy-res judicata argument is concerned. Count twelve charged that Turner and Lee, in violation of law, sold, bartered, exchanged, and gave away to Major Nedab eight capsules of heroin; and count thirteen that they facilitated the concealment and sale of the same eight capsules knowing them to have been imported into the United States contrary to law. Count fourteen charged that Turner and Lee, in violation of law, sold, bartered, exchanged, and gave away to Major Nedab seven capsules of heroin; and count fifteen that they facilitated the concealment and sale of the same seven capsules knowing them to have been imported into the United States contrary to law.

Prior to trial, appellants filed motions for bills of particulars, requesting, *inter alia*, information (1) whether the eight cap-

sules referred to in counts 12 and 13 were delivered to Major Nedab at the same time as the seven capsules referred to in counts 14 and 15, and (2) whether the sales referred to in counts 12 (eight capsules) and 14 (seven capsules) were in fact a single transaction. Only part of the motion was granted, and the Government filed a bill of particulars answering the first query in the affirmative. It should be noted that the bill of particulars did *not* state that the sales referred to in counts 12 and 14 were in fact only one sale.

As soon as the trial started, and before the jury was sworn, there was discussion between counsel and the Court as to whether Major Nedab, who had since been convicted and sentenced to a term of five years, would testify, either voluntarily or under compulsion. Nedab's counsel eventually informed the Court that Nedab would refuse to take the stand on the ground of possible self-incrimination the reason being that if he testified he might still be subject to prosecution on a conspiracy charge. The Government felt that without Nedab's testimony it would be unable to prove counts 14 and 15. Accordingly, the Court and defense counsel were informed, prior to the swearing of the jury, that these counts would be dismissed. In order to protect the defendants from any possible second jeopardy *on those two counts*, however, the actual dismissal was not made until the second day of trial.

At the close of the Government's case, defendants moved to have counts 12 and 13 dismissed as well, contending in substance that abandonment of counts 14 and 15 necessarily entailed dismissal of 12 and 13. That motion, and subsequent motions to the same effect, were denied, and Turner and Lee were ultimately convicted on the twelfth and thirteenth counts.

A. More than one sale was involved here and different evidence was required to prove each sale

Appellants rely heavily upon the bill of particulars which they read as if stating that the eight and the seven capsules were the object of but a single sale. That, however, is not the inference suggested by the facts. On the contrary. The facts in the record support the much more plausible hypothesis that

there were *two* sales. Officer Longo gave Nedab \$20.00 with which to purchase 15 capsules of heroin but Nedab turned over only eight capsules to Longo. Obviously, then, \$20.00 was payment for only eight capsules. Nedab therefore either purchased the other seven capsules for himself or for some other addict or he was given those capsules by Turner and Lee for sale at "retail" when opportunity in the form of a customer presented itself. Whereas Nedab was Longo's agent for the purchase of eight capsules, he was Turner's agent or some third person's agent or acting as principal for himself, so far as the other seven were concerned. Whichever of these hypotheses is adopted, it is evident that at least two sales took place. Each separate sale is a distinct offense, *Wesson v. United States*, 164 F. 2d 50 (8th Cir. 1947), and the fact that appellants purchased two quantities of narcotics at the same time and in the same transaction did not integrate the two offenses into one. *Normandale v. United States*, 201 F. 2d 463 (5th Cir. 1953). Appellants were properly charged with two sales and convicted of two offenses.

Moreover, since a plea of former jeopardy sets up affirmative matter and is not a denial of any allegation in the indictment, the burden of proof is upon the defendants and if not sustained by them, the issue must be answered in the negative. 14 Am. Jur., Criminal Law § 283 and cases there cited.

In view of appellants' total failure to disprove—or even to attempt to disprove—that two sales were, in fact, made here, they also failed to carry the burden of proof which the law imposes upon them on the issue of former jeopardy, and their argument must fail.

The soundness of the trial court's ruling on the motions is further fortified by the notable fact that different proof was required for each of the counts.

The constitutional prohibition against double jeopardy applies only if there is a second prosecution for a crime which is the same both in law and in fact as had been charged in the first prosecution. *Gavieres v. United States*, 220 U. S. 383, 31 S. Ct. 421, 55 L. Ed. 489 (1911); *Yep v. United States*, 81 F. 2d 637 (10th Cir. 1936), *reversed on other grounds*, 83 F. 2d

41 (1936). Or, as the rule has sometimes been stated, the test is whether an additional fact or facts, *Silverman v. United States*, 59 F. 2d 636 (1st Cir. 1932), *cert. denied*, 287 U. S. 640 (1932); *Mills v. Aderhold*, 110 F. 2d 765 (10th Cir. 1940), or additional testimony would be necessary to sustain the latter charge. *United States v. Aurandt*, 15 N. M. 292, 107 P. 1064 (1940). In the *Aurandt* case, the court said, at p. 1067:

* * * This is stated in another form by Judge Cooley in his *Constitutional Limitations*, p. 328: "If the first indictment or information were such that the accused might have been convicted under it on proof of the facts by which the second is sought to be sustained, then the jeopardy which attached in the first must constitute a protection against a trial on the second." Applying this principle, the conviction of the defendant was upon proof that the article of value was a war settlement warrant for \$31.57. This proof diverged from the allegations of the first indictment, in that there the article was alleged to be a draft for \$31. If offered in the first case, the proof in the second case could not have been received. The defendant was therefore in legal contemplation not tried the second time upon the case alleged against him in the first instance. * * *

It is readily apparent that these principles fatally jolt appellant's theory. The evidence necessary to prove a sale of eight capsules differed materially from that required to show a violation in connection with the seven capsules. That difference was precisely the reason why the charges were separated in the indictment, why the prosecutor decided to dismiss counts 14 and 15 but not counts 12 and 13, and why *autrefois acquit* cannot now be pleaded to eliminate those counts as well. In the one instance, the Government was able to prove the crime by the testimony of Officer Longo, the purchaser who obtained possession of the narcotics almost immediately after Nedab had left the Turner premises. As to the other counts, the capsules were not discovered until much later, when Nedab was finally searched after his arrest. The prosecution was

convinced that a violation in connection with those narcotics could never be proved without the testimony of Nedab and that testimony was unavailable. It is just this type of variance in proof between two indictments or counts that the courts had in mind when they set up the well-established rule outlined above. The constitutional protection from double jeopardy is not a toy to be twisted into grotesque shapes out of all proportion with its real function. Its purpose is to protect the citizen from being subjected by an oppressive Government to the inconvenience and the risk inherent in several prosecutions for but a single crime; it is not to be used to thwart all prosecution. Appellants here incurred neither inconvenience nor risk by the abandonment of some of the charges. It had been decided and agreed *before the jury was sworn* that counts 14 and 15 would be dismissed, and the dismissal was postponed by the Government until after the swearing of the jury only to safeguard appellants' constitutional rights with respect to those two counts. This was the sequence of events:

Before swearing of jury:

The COURT. You are moving to dismiss as to which ones ?

Mr. McLAUGHLIN. Counts 6, 7, 8, and 9.

Mr. HARRIS. Your Honor, might not that be after the main jury is sworn?

Mr. McLAUGHLIN. What?

Mr. HARRIS. *Could you do that after the jury is sworn?*

Mr. McLAUGHLIN. It is immaterial to me. * * *

The COURT. I think you are entitled to have the protection. * * * Jeopardy is what you mean?

Mr. HARRIS. Yes. (J. A. 19-20). (Emphasis supplied).

* * * * *

Mr. McLAUGHLIN. I will make a motion to dismiss the 14th and 15th counts.

The COURT. All right, sir. (J. A. 25).

* * * * *

The COURT. What is the situation in view of that?

Mr. McLAUGHLIN. In view of that, your Honor, the Government will go on and present Counts 12, 13, 16 and 17.

The COURT. And you will dismiss the other counts?

Mr. McLAUGHLIN. Yes, Your Honor. (J. A. 28).

* * * * *

After swearing of jury:

The COURT. Now, do I understand the Government is moving to dismiss the remaining counts?

Mr. McLAUGHLIN. Yes, your Honor.

* * * * *

The COURT. And 14 and 15?

Mr. MITCHELL. Yes, Sir.

Mr. HARRIS. Yes.

The COURT. * * * So the motion is granted. (J. A. 84).

The Government's course of action was adopted with the full approval and acquiescence—indeed at the request—of the defense, and that course of action materially benefitted appellants, and appellants only. To now go further and to hold that the other counts, too, should be abandoned simply because the Government—perhaps out of superabundance of caution and regard for the constitutional rights of the accused—had dismissed some of the counts, would be to transform the Fifth Amendment from a weapon of liberty into a rapier of crime. Protection from double jeopardy is protection from oppression—not a guarantee of immunity from punishment.

B. Assuming, *arguendo*, that only one transaction was involved, it was permissible to dismiss two counts and convict on the other two

Assuming, *arguendo*, that this was merely one transaction and one offense, still appellants were not put in jeopardy twice. The fallacy in appellants' arguments and in the cases they cite lies in the fact that they prove that the Government may not split one offense into two prosecutions or two counts and convict on both. That may readily be conceded. But appellants then go further and say that the accused cannot be con-

victed of either offense or on either count. That is incorrect. If the Government splits one offense into two counts and drops one count before going to the jury, then there may still be a conviction on the remaining count, so long as the evidence as to that count is sufficient to establish the violation of the law that is sought to be proved. Different facts of one transaction have since time immemorial been pleaded in different counts and the Government, prior to going to the jury, is merely required to elect between the various counts. See *Dealy v. United States*, 152 U. S. 539, 14 S. Ct. 68, 38 L. Ed. 545 (1894).

In *Barsock v. United States*, 177 F. 2d 141 (9th Cir. 1949), which appears to be as analogous to the instant case as any case that might be located, there had been dismissal of the second count of an indictment after the jury had been sworn. That count was claimed to be identical with the first count upon which the jury returned a verdict of guilty. The court, assuming that the two counts charged the same crime, held that

* * * a dismissal of one count, where the indictment charges the same offense in two counts, even after all the evidence is in, does not operate as a bar to a subsequent indictment for the same offense. (Citing cases.)

To the same effect, see *Shafer v. United States*, 179 F. 2d 929 (9th Cir. 1950).

Thus, even if the sales made were to be regarded as but one transaction, the action of the Government in dismissing as to one of the counts and going to the jury on the other would still have been proper as subjecting appellants to but a single jeopardy.

That is true especially where, as here, the accused themselves consented to the dismissal. In the leading case of *Craig v. United States*, 81 F. 2d 816 (9th Cir. 1936), *cert. dismissed*, 298 U. S. 637 (1936), *rehearing denied*, 83 F. 2d 450 (9th Cir. 1936), *cert. denied*, 298 U. S. 690 (1936), after all the testimony was in, defense counsel moved the Government to elect upon which of two counts it would proceed. The Government discharged Count 1, and the jury later failed to agree on Count 2.

Defendants were re-indicted, retried, and convicted on a charge which was the same as the original Count 1. To a double jeopardy argument, the Court gave the following answer:

Where a nolle prosequi as to one count is entered with the consent of the defendant, even after all the evidence is in, such dismissal does not operate as a bar to a subsequent indictment for the same offense.

Appellants Lee and Turner were in jeopardy only once and the trial judge was correct in not granting their motions for judgment of acquittal as to counts twelve and thirteen.

II

Turner's motion for judgment of acquittal was properly denied

Appellant Turner alleges that it was error to deny his motion for judgment of acquittal at the close of all the evidence. Essentially two arguments are made in support of that allegation: (1) No proof was offered that Major Nedab did not have a "written order form" as prescribed by law and, (2) there was no competent testimony that there ever was any transaction between Nedab and Turner.

A. Turner failed to bring himself within the exception contained in the statute

It has repeatedly been held that in prosecutions under Sections 2553 (a) or 2554 (a) it is not incumbent upon the Government either to allege, *Chin Gum v. United States*, 149 F. 2d 575 (1st Cir. 1945), *motion for stay of mandate denied*, 150 F. 2d 765 (1945); *Manning v. United States*, 275 Fed. 29 (8th Cir. 1921); *Nigro v. United States*, 117 F. 2d 624 (8th Cir. 1921); *Hurwitz v. United States*, 299 Fed. 449 (8th Cir. 1924), *cert. denied*, 266 U. S. 613 (1924), or to prove that the purchaser of the narcotic drug did so without a written order on the form prescribed. *Chin Gum v. United States*, *supra*; *Sauvain v. United States*, 31 F. 2d 732 (8th Cir. 1929); *Martinez v. United States*, 25 F. 2d 302 (5th Cir. 1928). *And see*, *Goode v. United States*, 80 U. S. App. D. C. 67, 149 F. 2d 377 (1945). The Government is not required to prove a negative if the defendant has in his possession the evidence of the affirmative.

Martinez v. United States, supra; *Taylor v. United States*, 19 F. 2d 813 (8th Cir. 1927); *Sauvain v. United States, supra*, *Flowers v. United States*, 83 F. 2d 78 (8th Cir. 1936). In *United States v. Holmes*, 187 F. 2d 222 (7th Cir. 1951), *cert. denied*, 341 U. S. 948 (1951), where one of the counts charged a violation of Section 2554 (a), the Court of Appeals for the Seventh Circuit upheld conviction on that count, and said, quoting in part from *Old Grand-Dad Whiskey v. United States*, 158 F. 2d 34 (10th Cir. 1946), *cert. denied*, 330 U. S. 828 (1947):

* * * when a criminal statute sets forth an exception, which exception is not a part of the crime, but operates to prevent an act otherwise included in the statute from being a crime, the burden is on the defendant to bring himself within the exception. * * * We hold that the conviction under Count 2 is sustained.

Section 2554 (a) clearly provided that "It shall be unlawful * * * except in pursuance of a written order form * * *." Turner offered no evidence of any kind to bring himself within that exception and it must therefore be presumed that Nedab did not have the Treasury form when he purchased narcotics from Turner.

B. There was sufficient evidence of Turner's guilt

As to the second proposition, that there was no evidence that Turner had ever made a sale of narcotics to Nedab, we submit that there was ample proof from which a jury, without indulging in speculation or conjecture, could find a verdict of guilty.

Briefly summarized, this was the evidence with respect to Turner's guilt of the charges in the indictment.

On April 22, 1952, Officer Dante Longo, a member of the Narcotic Squad of the Metropolitan Police Department, and Eugene Major Nedab, a known procurer (a person who does not himself have a supply of narcotic drugs but knows someone who has and through him makes purchases of narcotic drugs) were in Longo's automobile, parked near the intersection at 8th and Taylor Streets, Northwest. (J. A. 29, 33, 64.) Officer Longo gave Nedab \$20.00 in bills which had previously been

treated by the police with fluorescent powder (J. A. 66, 68, 69), and instructed him to purchase narcotics with that money. (J. A. 29). Nedab got out of the car and walked on 8th Street, in the direction of 4107 8th Street, (J. A. 30, 34), the house owned in part by appellant Turner. Turner was standing outside, sweeping the sidewalk. (J. A. 88). Nedab approached Turner, engaged him in a short conversation, and the two then entered the premises. (J. A. 88). Five to eight minutes later, Nedab came back out of the premises (J. A. 34), proceeded to the automobile, and gave Officer Longo eight capsules (J. A. 30) (which were subsequently turned over to Dr. Young, a Government chemist, and analyzed as containing heroin) (J. A. 51). There were no tax stamps on the capsules. (J. A. 31). About two or three minutes after Nedab had left the premises, several officers went up to 4107 8th Street, knocked, and when no one opened, started to break the door down. Turner and Miss Lee were seen coming out of the front room and run toward the kitchen, (J. A. 88, 89), then out of the back door. (J. A. 92, 96). Another group of officers meanwhile approached the rear door and when the appellants saw those officers, they ran back into the house. (J. A. 92). A male voice was heard to say, "here they come." (J. A. 93). When the officers reached the rear screen door, they found it locked and had to break it to enter. Meanwhile, the first group of officers had broken down the front door and as they entered they saw Turner running up the stairs to the second floor. (J. A. 67, 78). A search was made of the premises, and in the kitchen sink,¹

¹ Turner attempted to develop at the trial that a number of other persons were residing at 4107 8th Street NW., and he again argues here that in view of that fact and in view of the fact that the narcotics were found in the "common" kitchen sink, the evidence was insufficient to go to the jury. In *Lee Dip v. United States*, 92 F. 2d 802 (9th Cir. 1937), cert. denied, 303 U. S. 638 (1938), a very similar argument was made. There, opium was found in jars in the bathroom of defendant's living quarters. It was argued that "numerous other parties, members of the family and relatives of the appellant were shown to have occupied the living quarters along with him, and the opium might as well be supposed to have been theirs as his." The court rejected the argument and affirmed the conviction, in spite of the fact that there the appellant was not even present at the time the search was made.

a bottle containing 72 capsules, later identified as containing heroin, (J. A. 37, 52, 80), was found. There were traces of fluorescent powder on the cap on lid of that bottle. (J. A. 37). The officers found a second bottle on a cabinet above the kitchen sink. (J. A. 37, 81). The walls of that bottle contained traces of a white powder, later identified as heroin. (J. A. 52). Turner, when first questioned, denied owning the premises,² living on the premises, or knowing anything about the narcotic drugs. (J. A. 43, 82). Turner also denied ever having seen the first bottle but admitted, when originally questioned, that he had seen the second bottle before. (J. A. 82). However, on the stand (after it had been established that the second bottle contained traces of heroin) he denied admitting that he had seen the second bottle. (J. A. 108).

When the sufficiency of the evidence to support a verdict is challenged in a criminal case, the court of appeals will go no further than to ascertain whether there is any substantial evidence to support the verdict, *United States v. Ginsburg*, 96 F. 2d 882 (7th Cir. 1938), *cert. denied*, 305 U. S. 620 (1938), and, in considering that question, will take that view of the evidence which is most favorable to the Government. *Roberts v. United States*, 96 F. 2d 39 (8th Cir. 1938). For whether the evidence was sufficient to establish guilt beyond a reasonable doubt, or whether it was equally consistent with innocence or guilt, are matters for the jury. *United States v. Toscano*, 166 F. 2d 524 (2d Cir. 1948); *United States v. Ginsburg*, *supra*. The jury, or the court sitting without jury, may find the defendant guilty even if the evidence against him was merely circumstantial. See *United States v. Perkins*, 190 F. 2d 49 (7th Cir. 1951).

Applying these general, well-established, principles to the facts of the instant case, it is readily apparent that the evidence was such that the judge below was more than justified in not taking this case from the jury. Every single step of the transaction, except only the actual sale, was proved by careful,

² According to the records of the Real Estate Tax Division of the Assessor's Office of the District of Columbia, James S. Turner and Dorothy D. Turner were owners as tenants by the entirety of the premises 4107 Sth Street NW., in the District of Columbia. (J. A. 32).

credible, direct testimony. The sale itself was established by such a mass of circumstantial evidence that to require more proof than was introduced here would be equivalent to deciding that circumstantial evidence is never sufficient to sustain a conviction. That, of course, is not the law.

The contention that a jury of reasonable men could not, without including in speculation or conjecture, find appellant Turner guilty of the offenses charged, is so patently without merit as to actually appear frivolous.

III

Denial of the motion to suppress was not error

A. There was probable cause for issuance of the warrant

Appellants argue that the warrant for the search of Turner's premises was issued without probable cause, because, it is alleged, there is no averment in the affidavit that the officers had knowledge that anyone had purchased narcotics from within the premises owned by Turner.³

The test, by which the existence of probable cause for an arrest or a search is to be determined, has been redefined with great particularity in *Brinegar v. United States*, 338 U. S. 169 S. Ct. 1302, 93 L. Ed. 1879 (1949). The Supreme Court there carefully pointed out that probable cause is, after all, a matter of probabilities, that the standard of proof required for probable cause is far less stringent than the standard of proof required to establish guilt; and that nothing more is required to justify an arrest than that the circumstances known to the officer, by personal observation or by information, be such as would justify a man of reasonable caution in the belief that an offense had been committed. The Court said (338 U. S. at 173-176):

³ Appellant has no standing to raise this contention. Although appellant stated that he owned the premises in question he admitted that at the time of the search he did not live there, and that these premises were rented to five people. (J. A. 102). A mere claim of ownership, without more, does not give one a right to object to a search. *Nunes v. United States*, 23 F. 2d 905 (1st Cir. 1928); *Hardwig v. United States*, 23 F. 2d 922 (6th Cir. 1928). Fur-

There is a difference between what is required to prove guilt in a criminal case and what is required to show probable cause for arrest or search. * * * There is a large difference between the two things to be proved, as well as between the tribunals which determine them, and therefore a like difference in the quanta and modes of proof required to establish them.

* * * Guilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men from dubious and unjust convictions, with resulting forfeitures of life, liberty and property.

However, if those standards were to be made applicable in determining probable cause for an arrest or for search and seizure, more especially in cases such as this involving moving vehicles used in the commission of crime, few indeed would be the situations in which an officer, charged with protecting the public interest by enforcing the law, could take effective action toward that end. Those standards have seldom been so applied.

In dealing with probable cause, however, as the very name implies, we deal with *probabilities*. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act. The standard of proof is accordingly correlative to what must be proved.

"The substance of all the definitions" of probable cause "is a reasonable ground for belief of guilt." *Mc-*

ther appellant denied that he owned or possessed any narcotics in the premises in question. In fact he denied having any knowledge that narcotics were on the premises. (J. A. 102). This likewise bars him from challenging the search. *Scoggins v. United States*, — U. S. App. D. C. —, 202 F. 2d 211 (1953). See also *Harvey v. United States*, 90 U. S. App. D. C. 167, 193 F. 2d 928 (1952), *cert. denied* 343 U. S. 927 (1952).

Carthy v. DeArmit, 99 Pa. St. 63, 69. * * * And this "means less than evidence which would justify condemnation" or conviction, as Marshall, C. J., said for the Court more than a century ago in *Locke v. United States*, 7 Cranch 339, 348. Since Marshall's time, at any rate, it has come to mean more than bare suspicion: Probable cause exists where "the facts and circumstances within their the officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed. *Carroll v. United States*, 267 U. S. 132, 162.

These long-prevailing standards seek to safeguard citizens from rash and unreasonable interferences with privacy and from unfounded charges of crime. They also seek to give fair leeway for enforcing the law in the community's protection. Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice. (Footnotes omitted and emphasis added.)

Furthermore, the Court pointed out that the existence of probable cause for an arrest must be determined in all cases "by an act of judgment formed in the light of the particular situation and with account taken of all the circumstances." 338 U. S. at 176. As the Court said in *United States v. Rabinowitz*, 339 U. S. 56, 60, 63, 70 S. Ct. 445, 94 L. Ed. 616 (1950), the validity of any arrest or search must be determined solely by its reasonableness in the light of the circumstances of that particular case. It is immaterial that the particular facts of the *Brinegar* case bear no resemblance to the facts of the pres-

ent case. Fact situations vary to an almost infinite degree, and it is practically impossible to find two cases alike. The inquiry must always be whether a reasonable man would have made the arrest or search under the existing circumstances.

This Court followed and applied the test laid down in *Brinegar*. See *De Bruhl v. United States*, 91 U. S. App. D. C. 125, 199 F. 2d 175 (1952), *cert. denied*, 344 U. S. 868 (1952); *Gorland v. United States*, 91 U. S. App. D. C. 90, 197 F. 2d 685 (1952); *Harvey v. United States*, 90 U. S. App. D. C. 167, 193 F. 2d 928 (1952), *cert. denied*, 343 U. S. 927 (1952); *Mills v. United States*, 90 U. S. App. D. C. 365, 196 F. 2d 600 (1952), *cert. denied*, 344 U. S. 826 (1952); *Wyche v. United States*, 90 U. S. App. D. C. 67, 193 F. 2d 703 (1951), *cert. denied*, 342 U. S. 943 (1952).

Consequently, the question here is: in the light of the knowledge possessed by the six officers at the time they applied for the search warrant, was it an act of reasonable prudence and caution to issue the warrant, or was it an act based purely upon whim or caprice?

What, then, was the knowledge possessed by the officers at that time? It was by no means as meager as appellant would have this Court believe (Br. 25-28). While the officers had not actually seen Turner make a sale of narcotics, they had abundant first-hand knowledge of Turner's operations.

On April 5, Officer Longo observed one Louise Rucker (from whom Longo had purchased heroin in the same area a few days earlier) and several other people enter 4107 8th Street, remain a short while, and leave. When Louise Rucker came out of the premises, she met Longo on the sidewalk, they entered the automobile, Longo observed her count six small, white capsules of white powder, and when he attempted to purchase heroin she answered that she could not sell to him as she had "picked up" for one John Kruse.

On April 7, Longo made arrangements with Major Nedab to purchase heroin and learned that Nedab would probably go to 4107 8th Street. Nedab was observed entering 4107 8th Street, remain a short time, and return to Longo's car. Longo bought 4 capsules from Nedab for \$10.00. The

white powder in the capsules was found to indicate a positive reaction of the presence of a narcotic drug of the opiate group.

On April 9, Longo and Nedab again went to the vicinity of 8th and Taylor Streets NW. Sgt. Gabrys, Officer Holcomb, and Officer Brewer observed Nedab get out of Longo's automobile, enter 4107 8th Street NW., remain there a short time, return to the car, re-enter the premises, return to the car, and so on several times. Later, Officer Longo turned over to Sgt. Gabrys 53 capsules of a white powder, and a preliminary field test disclosed the presence of a narcotic of the opiate group.

On April 10, Longo made arrangements with Louise Rucker for the purchase of narcotics. Officers Gabrys, Brewer, and Herring observed Louise Rucker leave Longo's car, enter 4107 8th Street NW., remain a short period of time, and return to Longo's car. Longo, a short while later, turned over to Officer Herring 13 capsules containing a white powder. A preliminary field test disclosed the powder to have a positive narcotic alkaloid reaction.

On April 22, the day of the issuance of the search warrant and of making of the search and of the arrests, at about 12:44 p. m., Officer Raboy observed Nedab get out of Longo's automobile, enter the premises 4107 8th Street NW., remain until 12:54, and return to Longo's car. Later, Longo turned over to Officer Herring six capsules of white powder. An analysis of the powder indicated the presence of a narcotic alkaloid.

Armed with this knowledge and these observations, which were set forth in the affidavit accompanying the application for search warrant, the United States Commissioner was not acting upon the basis of mere suspicion, whim or caprice when he issued the search warrant. It was known that sales of narcotics had been made and it would seem to be beyond serious dispute that there was genuine reason to believe that the sales had been made from or in the premises 4107 8th Street NW. The officers might, of course, have been mistaken in that belief, but the mistake would have been that of a reasonable man, for which *Brinegar* makes allowances. The question is whether the inferences which were drawn from the facts were reasonable ones. In the light of the Officers' experience, *United States v. Sebo*, 101 F. 2d 889 (7th Cir. 1939); *United States v. Murray*,

51 F. 2d 516 (D. Md. 1931); and in the light of their observations over a period of time, the six officers were bound to conclude that there was a high degree of probability that illegal sales of narcotic drugs were being made at 4107 8th Street NW. "Absence of a well-grounded belief that such was the fact could be ascribed only to a lack of intelligence or to a singular lack of practical experience on the part of the officer." *Dumbra v. United States*, 268 U. S. 435, 441, 45 S. Ct. 546, 69 L. Ed. 1032 (1925).

There was ample probable cause for issuance of the warrant.

B. Although the warrant was sufficient for a nighttime search, this search was conducted during daylight hours

Appellant Turner further complains that search of the premises owned by him was made during the nighttime, and that the search warrant allegedly was at most sufficient for a daytime search.

He bases this contention upon the startling assertion that "there is no averment in the affidavit that any of the affiants were *positive* that narcotics were being concealed within the said premises." Appellant overlooks that *two* affidavits were executed and sworn to by the six officers in support of their application for search warrant, and that the principal affidavit, to which the one referred to by appellant was attached, stated in express language that the officers were positive that narcotics were being concealed (Gov. App. 1) and the search warrant itself again recites that the officers were positive that property was being held illegally on the premises to be searched (J. A. 2).

In the face of these specific averments and the detailed facts set forth in the affidavits in support of the averment of positivity, the contention that a nighttime search was not properly authorized borders on the fantastic and is wholly without merit.

Appellants' complaint is the more surprising in view of the fact that the search actually was made not at night, but during daylight hours. Officer Gabrys said that he saw Nedab leaving Officer Longo's automobile at about 6:40 p. m. on the evening of April 22, 1952 (J. A. 33), and returning approximately five minutes later. (J. A. 34). Officer Longo corroborated

that statement when he testified that Nedab returned to the automobile "a couple of minutes to seven." (J. A. 30). Officer Herring stated that he saw Nedab leaving Longo's car about 6:45 p. m., walk over to 4107 8th Street, remain there for about seven to eight minutes and return to the Longo automobile. (J. A. 87-88). On cross-examination, Herring testified that as soon as Nedab came out and got in Longo's car, a signal was given and the officers and marshals went to the Turner premises attempting to enter. (Gov. App. 2). The entry therefore, must have been accomplished just a few minutes after seven o'clock. Gabrys, on cross-examination, stated that at 7:20 p. m. he was already questioning Miss Lee about the narcotics. (J. A. 58-59). Herring was searching the house at that time. (J. A. 89). Turner himself said that he saw Nedab about 6:20 p. m., (J. A. 102), and that the police came into the house at most six minutes later. (J. A. 106). Thus, the entry into the Turner premises was made at 6:26 p. m., according to Turner's testimony, or, more likely, at some time between 7:05 and 7:15 p. m.⁴ Taking the most extreme figure of 7:15 p. m., it is clear that no authorization for a nighttime search was required since, under the law, the entry was not made during the nighttime. Appellant admits in his brief (p. 26) that on April 22, 1952, according to the records of the U. S. Weather Bureau, the sun set at 6:52 p. m., but he implies that any search after sunset is a nighttime search. That is not the law.

A warrant authorizing search in daytime only may be served after sundown, so long as there is sufficient light readily to recognize a person's features at a reasonable distance, *Moore v. United States*, 57 F. 2d 840 (5th Cir. 1932), for "daytime" does not end at sunset but includes dawn and twilight. *Atlanta Enterprises v. Crawford*, 22 F. 2d 834 (N. D. Ga. 1927). It has generally been held that nighttime starts any time from thirty minutes to one hour after sunset; e. g., *State v. Perkins*, 342 Mo. 560, 116 S. W. 2d 80 (1938) (30 minutes); *Moses v. State*, 124 Tex. Cr. R. 200, 61 S. W. 2d 112 (1933) (30 minutes); *Gray v. State*, 342 Wis. 57, 9 N. W. 2d 68 (1943) (one hour).

⁴ And not, as appellant now asserts, between 7:15 and 7:30 p. m.

The courts have adopted these rules because realistically, darkness does not set in with the setting of the sun. There is a period of time immediately following astronomical sunset when daylight still prevails.

In *United States v. Liebrich*, 55 F. 2d 341 (M. D. Pa. 1932), the search warrant was served at 7:15 p. m. (not earlier than in the instant case), and on the day the warrant was served (August 21, 1931) the sun set at 6:53 p. m. (one minute later than in the instant case). Thus 22 minutes elapsed between "technical" sunset and the search (in the instant case, there was an interval of at most 23 minutes between sunset and search). The court in the *Liebrich* case, applying the principles outlined above, held that the warrant was served in the daytime and that the search made there under was legal and proper. So was the search made in the Turner house.

IV

Supporting affidavits need not be affixed to the copy of the search warrant that is served

Appellant Turner further contends that the search warrant was invalid upon its face for failure to state therein, or in any attachment thereto, the grounds or probable cause of its issue. In short, it is appellant's contention, that under the District of Columbia Code or under the Federal Rules of Criminal Procedure, the affidavits of the police officers forming the basis for issuance of the warrant, must be attached to the instrument served upon him for that instrument to qualify as a warrant. The identical argument was raised in 11,786—*Ledbetter v. United States*, — U. S. App. D. C. —, — F. 2d — (1954) (on rehearing), and in 11,809—*Shay v. United States*, — U. S. App. D. C. —, — F. 2d — (1954), and rejected both times. This Court said that the provisions of the District of Columbia Code relating to search warrants need not be complied with if there is compliance with Rule 41 of the Federal Rules of Criminal Procedure. In both cases, the affidavits of the police officers were *not* affixed to the *copy* of the warrant served upon the occupant of the premises to be searched, and this Court sanctioned that procedure as full compliance with Rule 41. *Shay* and *Ledbetter* obviously are controlling.

The heroin sold or concealed by defendants was a derivative of opium

Finally, appellants allege that the Court erred in its denial of the motion for judgment of acquittal with respect to Counts 13 and 17 because of lack of proof that the narcotic charged was a derivative of opium.

The Government is not required to prove that heroin or heroin hydrochloride is a derivative of opium. *United States v. Chiarelli*, 192 F. 2d 528, 532 (7th Cir. 1951), *cert. denied*, 342 U. S. 913 (1952); *United States v. Pisano*, 193 F. 2d 355 (7th Cir. 1951). And see, *Chadwick v. United States*, 117 F. 2d 902 (5th Cir. 1941); *Hughes v. United States*, 253 Fed. 543 (8th Cir. 1918); *James v. United States*, 297 Fed. 111 (5th Cir. 1922); *Greenberg v. United States*, 285 Fed. 865 (8th Cir. 1923); *Biegler v. United States*, 86 F. 2d 41 (7th Cir. 1936), *cert. denied*, 300 U. S. 677 (1937). The trial court may properly take judicial notice of the fact that it is. *United States v. Chiarelli*, *supra*; *United States v. Pisano*, *supra*; *James v. United States*, 61 F. 2d 912 (5th Cir. 1932), *cert. denied*, 288 U. S. 613 (1933); *United States v. Holmes*, *supra*.

In the instant case, although not required to do so, the Government did show that the heroin hydrochloride contained in the capsules in question here was, in fact, a derivative or preparation of opium. Dr. James L. Young, a Treasury Department Chemist, testified as follows:

On direct examination:

Q. Did you make an analysis of those eight capsules?

A. I did.

Q. And what did they contain?

A. They contained a mixture of Heroin Hydrochloride, Quinine Hydrochloride, and Milk Sugar, and the net weight of the contents was 13 grains. They were individually analyzed.

Q. And is Heroin a derivative of Opium?

A. It is, Sir. (J. A. 51).

* * * * *

On cross examination:

Q. Doctor, are you in a position to say that the powder that you found in both of those exhibits, which you did describe as Heroin, whether or not it was in fact derived from Opium or from the Opium poppy?

A. It is my opinion it was. (J. A. 54)

* * * * *

Appellant lays great stress upon the fact that, upon being further cross examined, Dr. Young admitted that to his knowledge there had been one experiment where heroin had been produced synthetically, and that it was chemically impossible to tell the difference between heroin as derived from the opium poppy and heroin as synthesized in a chemical laboratory. From that, appellant deduces that the Government failed in its case with respect to counts thirteen and seventeen. Nothing could be more erroneous. In the first place, as stated above, it was not necessary for the Government to prove the derivation of the heroin since the Court could properly take judicial notice thereof. Moreover, a qualified witness testified that in his opinion the heroin here involved was, in fact, derived from opium or from the opium poppy, and the jury believed him.⁵ And finally, chemically produced heroin is as much within the prohibition of the statute as heroin directly produced from the opium poppy.

Section 171 of Title 21, United States Code, defines "narcotic drug" as follows:

When used in sections 173-185 of this title—(a) The term "narcotic drug" means opium, cocoa leaves, cocaine, isonipecaine, opiate, or *any salt derivative, or preparation of [above]* * * * and the word "opiate" as used herein shall have the same meaning as defined in section 3228 (f) of Title 26. * * * 35 Stat. 614 (1909), as amended, 60 Stat. 39 (1946). (Emphasis Supplied.)

The Attorney General of the United States, in 36 Ops. Atty. Gen. 258 (1930), discussed the legality of seizure by Treasury agents of a drug manufactured synthetically from a substance

⁵ No witness was offered by the defense to rebut Dr. Young's testimony.

other than opium, cocoa leaves, or cocaine, where the statute (Narcotic Drugs Import and Export Act of May 26, 1922) prohibited only the import of opium, cocoa leaves, cocaine, *or any salt, derivative, or preparation of [above]*. The Attorney General, discussing the authorities, then wrote as follows:

The drugs covered by the Act are in part specifically named ("opium, coca leaves, cocaine"), but by far the greater number of them are referred to under a general classification ("any salt, derivative or preparation of opium, coca leaves or cocaine"). * * * A similar method of designating drugs generically was employed by Congress in the enactment of the Food and Drugs Act, 34 Stat. 768, 770. The International Opium Convention of 1912 adopts the same method. * * * It was not reasonably practicable for Congress to set up in the statute an exhaustive enumeration of the salts, derivatives and preparations of the drugs named, which might then have existed (actually running into the hundreds, according to reliable information), and much less so, to anticipate those which might later be discovered and produced. Such an enumeration would have been subject to technical inaccuracies and omissions and would have required constant amendment to keep it abreast with chemical progress. These reasons of practical convenience, in my opinion, sufficiently account for the use of the generic designation of drugs in the definition of the term "narcotic drug" in section 1 (a); and exclude the hypothesis that drugs named generically should be treated differently from drugs named specifically (pp. 261-262).

The Attorney General went on to say that the words "salts" and "derivatives" are used in the International Opium Convention in connection with and in relation to precisely stated chemical formulas. In the light of their context, therefore, those words in the Convention are to be understood in their chemical sense. The same words occurring in a statute enacted to give effect to that Convention may reasonably be deemed to have been used in the same sense. And

If, as seems to be uncontroverted, tropacocaine hydrochloride, as a matter of scientific definition, is a "salt, derivative, or preparation of opium, coca leaves, or cocaine," using those terms in their chemical sense, any specific quantity of that drug is a "narcotic drug" within the meaning of the statute. It is not indispensable that it should be actually produced or derived, in the commercial or popular sense, from opium, coca leaves, or cocaine in order to bring it under the ban of the statute.

These conclusions seem to be fortified by the way the statute would apply in the case of cocaine. Cocaine is included by name in the definition of a "narcotic drug." Section 1 (a). No distinction is made in the Act between cocaine which occurs in nature as an alkaloid in coca leaves and cocaine which may be manufactured synthetically from a different substance. Since synthetic cocaine is a "narcotic drug" that falls under the ban of the statute, it is a fair inference that Congress intended a like result in the case of Synthetic substitutes for the other drugs that admittedly fall under the ban of the statute. It does not militate against this inference that such other drugs are not specifically referred to in the Act by name. They are identified just as definitely as if they had been named and there is no reason to believe that Congress intended that drugs named generically should be treated any differently from drugs named specifically. It is not denied that tropacocaine hydrochloride is a "narcotic drug" if it is produced from coca leaves or cocaine. Tropacocaine hydrochloride that is produced from other substances is none the less tropacocaine hydrochloride. (P. 268.)

The same is true with respect to heroin. It, too, clearly is a narcotic drug if produced from the opium poppy, and it, too, is no less a narcotic drug if produced "synthetically" from other substances. That it clearly may be considered, in the technical sense, a "derivative" of opium even though produced

chemically, is shown, too, by Webster's definition of "derivative":

Chem. A substance so related to another substance by modification or partial substitution as to be regarded as derived from it, *even when not obtainable from it in practice*; thus, the amino compounds are derivatives of ammonia. (Emphasis sometimes supplied.) Webster's New Collegiate Dictionary.

See also, *United States v. Antikamnia Chemical Co.*, 231 U. S. 654, 34 S. Ct. 222, 58 L. Ed. 419 (1914).

The trial court was correct in refusing to grant defendants' motion for judgment of acquittal on counts 13 and 17

CONCLUSION

Wherefore, it is respectfully submitted that the judgments of the District Court be affirmed.

LEO A. ROVER,

United States Attorney.

LEWIS A. CARROLL,

ARTHUR J. McLAUGHLIN,

SAMUEL J. L'HOMMEDIEU, Jr.,

Assistant United States Attorneys.

GOVERNMENT APPENDIX

Nos. 11918, 11920

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DISTRICT COURT OF THE UNITED STATES

DISTRICT OF COLUMBIA DIVISION

Commissioner's Docket No. 11 Case No. 5398

AFFIDAVIT FOR SEARCH WARRANT

UNITED STATES OF AMERICA

v.

MRS. DOROTHY D. TURNER

*has reason
to believe*

Before Cyril S. Lawrence
Name of Commissioner

Municipal Center, Washington, D. C.
Address of Commissioner

The undersigned being duly sworn deposes and says:

That he (is positive)¹ that (on the premises known as) 4107 8th Street NW., Washington (a two story brick dwelling occupied by Mrs. Dorothy D. Turner), in the District of Columbia, there is now being concealed certain property, namely Heroin, Syringes, Tourniquets, Cookers, and paraphernalia used in the preparation of Heroin for retail. Any other paraphernalia used in the preparation and dispensation of Heroin and any other narcotic drugs. Any other narcotic drugs illegally held. The facts to sustain this are set forth in the affidavit attached hereto and made a part hereof.

which are in violation of U. S. Code Title 26, Section 2553a, and which are being held illegally.

here give alleged grounds for search and seizure

¹ The Federal Rules of Criminal Procedure provide: "The warrant shall direct that it be served in the daytime, but if the affidavits are positive that the property is on the person or in the place to be searched, the warrant may direct that it be served at any time." (Rule 41C)

on the person of

And that the facts tending to establish the foregoing grounds for issuance of a Search Warrant are as follows: See the affidavit attached hereto and made a part hereof.

Sherwood H. Herring
PVT. SHERWOOD HERRING,
NARC. SQD., MPDC

Joseph A. Gabrys
DET. SGT. JOSEPH A. GABRYS,
NARC. SQD., MPDC

Irvin W. Brewer
PVT. IRVIN W. BREWER, NARC.
SQD., MPDC

Dante Longo
PVT. DANTE LONGO, NARC.
SQD., MPDC

Seymour Raboy
PROB. DET. SEYMOUR RABOY,
NARC. SQD., MPDC

Guy W. Holcomb, Jr.
Signature of Affiant.
PROB. DET. GUY W. HOL-
COMB, Jr., NARC. SQD.,
MPDC

Official Title, if any.

Sworn to before me, and subscribed in my presence, April 22, 1952.

C. S. Lawrence,
United States Commissioner.

326 Sherwood H. Herring

* * * *

331 Cross-examination

* * * *

346 Q. Now, how soon thereafter, sir, was it that you went into premises 4107? A. Approximately from the time he went in, about ten minutes. I think he remained in there probably five to seven to eight minutes, and when he came out and got in Officer Longo's car, I gave Officer Holcomb, Brewer, and the marshals a signal and the marshals came down from 8th and Upshur, and Brewer and Holcomb were behind him, and I came up from the corner of 8th and Taylor and joined them. Then just as soon as we could get the door open, we went in.

* * * *

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